Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

BART A. ROSS

PETITIONER

v.

STATE OF ILLINOIS ET AL.

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI

BART A. ROSS - PRO SE
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12 1 PP

QUESTIONS PRESENTED FOR REVIEW

1. Do all courts have the obligation to guard, enforce, and protect every right secured by the Constitution of the United States through proper interpretation, construction, application, general administration and enforcing of the laws to controversies brought before them, to provide public administration of justice,

in particular, to provide administration of justice to Petitioner? (p.28)[1]

2. Can the justice be provided by suppression or alteration of the facts and history by courts,

in particular, was the justice provided to Petitioner by suppression and/or alteration of the facts and pleadings in Petitioner's Complaint, and had the Court of Appeals right/authority and jurisdiction to alter the facts and history of dismissal Petitioner's suit by District Court? (pp.3-10; pp.10-12; pp20-21; pp.28-29)

3. Whether the Supreme Court's decision in *Wilson v. Garcia*, 471 U.S. 261 (1985), adopting for 42 U.S.C. § 1983 claims state's statute of limitations for personal injury, violates constitutional separation of powers,

in particular, in application to violation of Petitioner's civil rights secured by 14th and 13th Amendments through excessive force and battery in medical treatment, to which, under 42 U.S.C. § 1988, applicable Illinois statute of limitations is 735 ILCS 5/13-212 "Physician or hospital" and

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[1] (p.***) refers to page in this Petition

following 735 ILCS 5/13-215 "Fraudulent concealment"? (p.10 at 12-17)

4. Whether Eleventh Amendment's mandatory provision "Judicial power of the United States shall not be construed to extend to any suit..." provides to the State and constitutionalizes grant of general sovereign immunity under ancient state's common laws, preventing suing the State by own citizen under federal question without State's consent,

in particular, preventing suing the State of Illinois by Petitioner, on account of violating 14th Amendment of denying access to courts to prosecute violations by private persons of Plaintiff's civil rights secured by 14th and 13th Amendments to the Constitution? (p.20 at 21-22, 24-26)

5. Whether Congress using its legislating powers provided laws to reach State in 42 U.S.C., § § 1983, 1985, 1986 under 28 U.S.C. § 1331 (federal question),

in particular, in application to violation of Petitioner's civil rights secured by 14th Amendment of denying access to courts to prosecute violations by private persons of Plaintiff's civil rights secured by 14th and 13th Amendments to the Constitution? (p.20 at 23-24)

PARTIES TO PROCEEDINGS

1. The Petitioner, BART A. ROSS at all times material hereto, was and is a citizen of the United States and State of Illinois.

2. The Respondent STATE OF ILLINOIS represented by Governor, the elected members of the General Assembly, the Justicies of the Illinois Supreme Court, the Justices of the Appellate Court First District Second Division, the Judges of the Circuit Court of Cook County, Illinois, the Judges of the Illinois Court of Claims, officers of the State of Illinois Judicial Inquiry Board, officers of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, officers of the Illinois Department of Professional Regulation.

3. The Respondents MARGARET O'LEARY, MICHAEL KRAUSE, EILEEN LYSAUGHT and BARRY BOLLINGER at all times material hereto, were attorneys, duly licensed in the State of Illinois, and held themselves out to be attorneys, and were engaged in the practice of their profession in the City of Chicago, County of Cook, and State of Illinois.

4. The Respondents DR. HENRY BRIELE, DR. DENNIS GALINSKY, DR. EDWARD BRUNNGRABER, DR. BARRY WENIG and DR. HOWARD KOTLER at all times material hereto, were physicians, duly licensed in the State of Illinois, and held themselves out to be physicians, and were engaged in the practice of their profession in the City of Chicago, County of Cook, and State of Illinois.

5. The Respondent UNIVERSITY OF ILLINOIS AT CHICAGO HOSPITAL AND CLINICS at all times material hereto, was duly engaged as a hospital and conducting hospital, nursing and associated services while maintaining its facilities at Chicago, Illinois.

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JURISDICTIONAL STATEMENT

A. Date of the order thought to be reviewed

Date of entry of the order by Court of Appeals for the 7th District is September 26, 2002.

B. The Supreme Court Of the United States Jurisdiction

is under 28 U.S.C. §1254(1) and 28 U.S.C. §2101(c).

CITATIONS OF THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

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STATEMENT OF THE CASE

A. District Court Jurisdiction

was invoked under 28 U.S.C. Section 1331 and 1343. The action was brought pursuant to the Fourteenth Amendment; Thirteenth Amendment; Article 6; Article 3, Section 2 of the United States Constitution, and the laws of the United States, specifically 42 U.S.C. Section 1983, 1985(3), 1986, 1988. (stated in Complaint, ¶ 1)

B. Statement of facts.

During treatment for squamous cell carcinoma of the floor of mouth at the University of Illinois at Chicago Hospital and Clinics, between July 10, 1992 and June 2, 1993 by Respondents Drs. Briele, Galinsky, Brunngraber, Wenig and Kotler, and continued by other physicians until March 1995, Petitioner was subjected to radiation therapy as primary treatment followed by additional surgery without his knowledge and consent, and that constitutes excessive force and battery, Van Leeuwan v. Nuzzi (1993), 810 F.Supp. 1120 - Complaint, Facts 10 through 60. (App.69-73)[2].

Hand written record dated August 18, 1992 signed by Dr. Briele "Plan continues ¢ primary treatment ¢ radiation". (Compl.A160)[3] not decipherable to a layman and all other records (Cmpl.164,166,186,400), and perjurious affidavits of Respondents Drs. Galinsky and Wenig (Cmpl.A318-325) supporting motion for summary judgment (Cmpl.A316), withdrawn on November 25, 1996

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[2] (App.***) Refers to page of Appendix

[3] (Cmpl.A***) refers to page of exhibits supporting Complaint, certified at page 98 of the Complaint.

(Cmpl.A326), stated in Fact 98 of the Complaint, leave no doubt as to medical battery. (App.83).

On about September 30, 1996, Petitioner obtained affidavit of Dr. Ward (Cmpl.A374) and on about November 5, 1996 affidavit of Dr. Laursen..." (Cmpl.A349); (App.65), from which he learned that was subjected to planned radiation therapy as primary treatment requiring additional surgery without his knowledge and consent, and on about January 19, 1997, Petitioner for the first time was able to decipher record of August 18, 1992 (Cmpl.A160): "Plan continues ¢ primary treatment ¢ radiation". Complaint Facts 56-57. (App.70).

Dr. Laursen in his affidavits testified: "It is my opinion that no informed consent was obtained from Mr. Ross before selecting radiation therapy as the primary treatment modality." against Respondents doctors (App.65 at 66) and against Hospital (Cmpl.A715j at A715k)

Through fraud, conspiracy and abuse of the power of judicial office, excessive force and battery of subjecting to radiation as primary treatment, requiring additional surgery, without Petitioner's knowledge and consent was not permitted even to be plead in State courts:

On January 4, 1997, Petitioner signed contract with Respondent attorney O'Leary to prosecute his all claims (Cmpl.A352). She, among many other misrepresentations of the cause of action changed date of last treatment by Dr. Galinsky from June 2, 1993 to "On and before April 15, 1993", did not plead fraudulent concealment that **plaintiff was subjected to radiation therapy as primary**

treatment without his knowledge and consent... Complaint, Facts 99 and 101 (App.83), removed surgery of April 15, 1993 and Drs. Wenig and Kotler entirely (App.95-101; 98 lines 14-17) forcing Petitioner to stand on Complaint Barnett v. Zion Park District, 171 Ill. 2d 378, 384, 665 N.E.2d 808 (1996). Appellate Court ruled (Cmpl.A647 at A653):

> "Ross claims that defendants fraudulently did not "disclos(e) to Plaintiff that radiation treatment was chosen by Defendants as primary treatment to be followed by surgery without Plaintiff's knowledge and consent."... **No facts stated in the complaint support the claim**."...
>
> "On appeal Ross cites several cases for the proposition that the law permits him to challenge the court's dismissal of his complaint... e.g. Barnett v. Zion Park District, 171 Ill. 2d 378, 384, 665 N.E.2d 808 (1996). We are not persuaded that Ross understands the significance of standing on his complaint."... (Cmpl.Exh.(A647 at A661); By standing on his complaint, Ross waived the right to amend to plead facts showing the fraudulent concealment caused Ross to discover late his cause of action for negligent treatment... Affirmed." (Cmpl.A669)

Above facts are incorporated in all Counts I-VIII of the Complaint (App.84,85,86,88,93,105,108).

The elements of conspiracy to deny Petitioner access to courts, are very numerous. Petitioner provided in the Complaint Facts 10 through 120 incorporated in all Counts I-VIII, in Count VI ¶¶173 through 189 (e.g. ¶¶186-187, App.93-101), then, in District Court in Responses to Respondents' Motions for Summary Judgment, expanded in Motions for

Reconsideration (Dock.96,97,121,137)[4] and repeated in Appellant's Brief in Court of Appeals.

Direct conspiracy of all Respondents to deny access to courts continued with Appellate Court, as described in Motion for Reconsideration filed on August 1, 2001, pages 4-6 (Dock.96) and in Appellants Brief, pages 20-21 with references to supporting exhibits, is illustrated as follows:

O'Leary restricted Dr. Galinsky's treatment from June 2, 1993 in original Complaint to April 15, 1993 in Amendment Complaint, struck record of follow up with Dr. Galinsky on June 2, 1993 and supported response to Defendants' motion to dismiss with Amended Answer to Complaint by Lysaught restricting treatment by Dr. Galinsky to March 30, 1993.

Then Krause filed not sworn to Dr. Galinsky's affidavit claiming that he treated Plaintiff until February 17, 1993, and did not treat Plaintiff on June 2, 1993.

During hearing on July 3, 1997, representing Plaintiff O'Leary argued:

> MS. O'LEARY: ...Their negligence occurred during the time periods they described in their affidavits [Dr. Galinsky until February 17, 1993], however, there was no injury until he had that surgery on April 15th...

Defendants claimed on appeal that Dr. Galinsky in his affidavit indicated that he last treated Plaintiff on February 17, 1993 and attested that did not administer any treatment on June 2, 1993.

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[4] Dock.*** refers to Docket Entry in District Court

Following Appellate Court's ruling in Order of December 15, 1998 and repeated in order of February 9, 1999 was directly based upon stated above overt acts of O'Leary and Krause et al. (excluding Hospital) to effectuate and promote conspiracy directly with the Appellate Court, to deny Plaintiff review the lawsuit on merits:

> "[On April 11, 1995, Ross filed his original complaint *pro se*... Ross alleged that... Galinsky's treatment continued until June 2, 1993... (Cmpl.A647-648) - this part of Order not cited in Motion to Reconsider and Appellant's Brief]
> Galinsky swore that he did not treat Ross when he saw him in June 1993, and he completed all treatment of Ross before March 1993, more than two years before filing of the original complaint.
> ...the complaints and exhibits support Galinsky's assertion that he completed radiation treatment of Ross by March 1993. Thus, the allegations... all describe actions completed more than two years before Ross filed his original complaint."

although all new that Dr. Galinsky treated Petitioner until June 2, 1993. Respondents Krause et al. on December 21, 2000, in their Statement Rule 56.1(a) supporting granted motion for summary judgment, admitted affirmatively for the first time that Dr. Galinsky treated Plaintiff until June 2, 1993 (Stat.Rule 56.1(a),¶26, (Dock.21)) with reference to stricken by O'Leary record of follow up with Dr. Galinsky on June 2, 1993.

As provided above, Respondent Krause filed fraudulent affidavit of Dr. Galinsky in Circuit Court in 1997, Bollinger on August 20, 1996 denied Petitioner access to records through excessive force

and battery together with Circuit Court - Complaint, Fact 93 (App.79 through 81).

Further, direct conspiracy of all Respondents to deny access to courts continued with Court of Claims, as described in Motion for Reconsideration filed on August 1, 2001, pages 11-13 (Dock.96) and in Appellants Brief, pages 24-27 supported by relevant exhibits, is illustrated as follows:

Bollinger and Krause pursued on January 24, 2000 *res judicata* and that the Defendant is not the Hospital of the University of Illinois but the Board of Trustees of the University of Illinois. (App.109-112). See also Complaint, Fact 120 (App.83-84)

resulting in dismissal of Hospital's superior responsibility on account of actions of its agents and/or employees on March 2, 2000 (Cmpl.A711), and then converting Petitioners suit against Hospital of the University of Illinois to suit against Board of Trustees of the University of Illinois on September 15, 2000 (Cmpl.A716), in violation of 74 Ill. Adm. Code, Section 790.20 and 735 ILCS 5/2-104.

Petitioner filed federal lawsuit on November 1, 2000. District Court:

1. granted Respondents' motion for summary judgments (App.42)

(a) as to excessive force and battery in medical treatment, Counts I through IV on bases of 2 year statute of limitation provided by Supreme Court decision *Wilson v. Garcia*, 471 U.S. 261 at 276 (1985), rejecting Petitioner's argument in response that, state remedies would eliminate need for federal lawsuit and that federal lawsuit was filed after exhausting state remedies, which did not accrue until September 15, 2000 as to Hospital and at least

until June 2, 1999 as to doctors, when Illinois Supreme Court denied leave to appeal claims of conspiracy, and

then District Court refused to address (App.44-46) Petitioner's argument in motion for reconsideration (Dock.99) that under 42 U.S.C. §1988 applicable state statute of limitations is 5 year pursuant to 735 ILCS 5/13-212 and 735 ILCS 5/13-215, which did not expire until November 2001 because of Respondents' fraudulent concealment and discovery on about November 5, 1996;

(b) as to denying access to courts, Counts VI-VIII on bases of Petitioner's awareness of conspiracy in 1997 and 2 year statute of limitation provided by Supreme Court decision *Wilson v. Garcia*, 471 U.S. 261 at 276 (1985), suppressing Petitioner's claim of continuous conspiracy until present (Complaint, ¶204 (App.107), which did not accrue until June 2, 1999 as to suit in Circuit Court and September 15, 2000 as to suit in Court of Claims, and refused also to address Petitioner's argument of direct conspiracy of all Respondents with Appellate Court (App.44-46), which could not accrue until ruling of at least December 15, 1998, and that in Court of Claims Krause and Bollinger on January 24, 2000 filed motion to dismiss which accrued the conspiracy claim on September 15, 2001 or at least March 2000, what makes Counts VI-VIII filed timely, and

2. Then granted State's motion to dismiss (App.40) and denied to reconsider (App.44) based upon the only argument raised by State, in motion to dismiss (App.113) and reply to Petitioner's response (App.117), that state cannot be sued without State's consent under 11th Amendment immunity, rejecting argument that it violates the Constitution.

On September 26, 2002 Court of Appeals affirmed all dismissals (App.34):

(1) as to medical battery of subjecting to radiation treatment as primary without knowledge and consent, Counts I-IV on bases of *res judicata* never raised by Respondents and rebutted by Petitioner in response to argument of *Rooker-Feldman doctrine* that battery of subjecting to radiation treatment as primary was not even permitted to be plead in state's Complain, and not addressing argument of applicable 5 year statute of limitations under 42 U.S.C. § 1988 and Illinois 735 ILCS 5/13-215 pursuant to 735 ILCS 5/13-212;

(2) as to denying access to courts, Counts VI-VIII, on same bases as District Court, of Petitioner's awareness of conspiracy in Circuit Court in 1997, suppressing facts of direct conspiracy with Appellate Court in 1998 and continuing until 2000 with Court of Claims; and

(3) as to State on bases Rule 12(b)(6) of failure to state a claim because State is not a person under 42 U.S.C. § § 1983, 1985, 1986, and vacated order of District Court dismissing State based upon 11th Amendment immunity of not consenting State, and also imposed on District Court to enter dismissal of State on bases of failure to state a claim under Rule 12(b)(6), in spite that State raised in District Court only argument of 11th Amendment immunity .

ARGUMENT

1. Medical battery. Court ruling: ...Ross received a course of... radiation treatment... The tumor responded well... and doctors were optimistic that Ross would make a full recovery. Unfortunately, the cancer recurred, and... radical surgery... left Ross

disfigured... His complaint, however, never explains how the handling of his illness amounted to a civil rights violation... The doctors and the hospital argue that, under the *Rooker-Feidman* doctrine, the district court lacked subject matter jurisdiction to consider Ross's section 1983 claim... Ross... is not taking issue with what the state court *did*. He is taking issue with what the state court *declined to do*:... Essentially, Ross was attempting to relitigate a suit that has already been decided against him; he was barred from doing so not by *Rooker-Feldman* but by the doctrine of res judicata... (App.34-37)

totally suppressed facts of excessive force, battery and conspiracy of subjecting Petitioner to radiation therapy as primary treatment followed by additional surgery without Petitioner's knowledge and consent pleaded in the Complaint, Fact 60 (App.73) and in ¶¶127, 138, 144 of Counts I, III, IV as violating 14th and 13th Amendments (App.85-88).

Res judicata requires previous adjudication on merits *Allen v. McCurry*, 449 U.S. 90, 101 S.Ct. 411, 415, 66 L.Ed.2d 308. (1980). As the result of conspiracy, not pleading by O'Leary in the Amended Complaint subjecting Petitioner to radiation treatment as primary requiring additional surgery, and dismissing by State Courts entire Complaint through fraud, no part of Petitioner's State Complaint was adjudicated upon merits, and medical battery was not even part of the Complaint.

Petitioner, a non attorney, did not use expression "denying access to courts to review medical malpractice suit upon "merits"" in the Complaint. Instead, he used expression "denying access to courts" by "dismissing the [State] Complaint through

conspiracy, fraud, excessive force, battery and suppression of conspiracy", Part C. (App.76) and Facts 101,113,116 (App.83) - same as "merits".

These facts are incorporated in Counts I-IV (App.84-86) of medical battery, and including Appellant's Brief, pages 8-10; 18 and Reply Brief, pages 3-11 in response to *Rooker-Feldman doctrine* (*Rooker-Feldman doctrine* together with *collateral estoppel doctrine* are forms of *res judicata*)

giving right to federal suit, as subjecting a patient to a medical procedure through fraudulent concealment, is an excessive force and battery violating Fourteenth Amendment, e.g. *Van Leeuwan v. Nuzzi* (1993), 810 F.Supp. 1120, 1123; *Franklin v. U.S.*, 992 F.2d 1492, 1497 (10th Cir. 1993).

Furthermore, like District Court, the Court of Appeals did not address Petitioner's argument of violation separation of powers in decision *Wilson v. Garcia*, 471 U.S. 261, 276 (1985) imposing state statute of limitations for personal injury and deprived Petitioner applicability of 5 year statute of limitations as to medical battery under 42 U.S.C. § 1988 and applicable Illinois 735 ILCS 5/13-215.

Sections 1983 and 1985 of 42 U.S.C. depend on section 1988 to determine statute of limitations, which provides in relevant parts:

> § 1988. (a) Applicability of statutory and common law. The jurisdiction in civil and criminal matters conferred on the district courts... for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so

far as such laws are suitable to carry the same into effect; but **in all cases where they are not adapted to the object**, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, **the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction** of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and the laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause

Illinois provides statute of limitations applicable to medical malpractice 735 ILCS 5/13-212 which provides limitation period 2 year for common negligence and 5 years for medical battery through fraudulent concealment, pursuant to 735 ILCS 5/13-215.

735 ILCS 5/13-212 "Physician or hospital" provides in relevant parts: "(a) Except as provided in Section 13/215 of this Act...", and 735 ILCS 5/13-215 "Fraudulent concealment" provides:

§ 13-215. Fraudulent concealment. If a person liable to an action fraudulently conceals the cause of action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards.

All courts have the obligation to guard, enforce, and protect every right secured by the Constitution of the United States. *PI Enterprises, Inc. v. Cataldo,*

(C.A. 1st Cir. 1972) 457 F.2d 1012, 1014 pursuant to Article 6 of the Constitution, which provides in relevant parts:

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof;... shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. ...judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution...

and both, the District Court and Court of Appeals had obligation to apply to Petitioner's case of medical battery statute of limitations provided by statutory law: 42 U.S.C. § 1988, 735 ILCS 5/13-212 and following 735 ILCS 5/13-215, not decision in *Wilson v. Garcia*, 471 U.S. 261 at 276 (1985).

Decision in *Wilson v. Garcia*, adopting for § 1983 claims State statute of limitations for personal injuries under 42 U.S.C. § 1988 violates constitutional separation of powers. As noted in *Wilson v. Garcia*, at 281, Courts may not legislate the law, and may only invalidate a statute as unconstitutional:

> "This Court has consistently interpreted § 1988 as instructing that the rule applicable to the analogous state claim shall furnish the rule of decision "**so far as the same is not inconsistent with the Constitution and the laws of the United States.**"."

Illinois 5 year statutes of limitations for medical battery is not inconsistent with the Constitution and the laws, e.g., there is no limitations, both, State of

Illinois and federal on capital offenses under criminal codes: Illinois 720 ILCS 5/3-5(a) provides that prosecution of first degree murder... may be commenced at any time, and federal 18 U.S.C., §3281 provides that indictment of offenses punishable by death may be commenced at any time without limitation.

As Justice O'Connor explained that every injury can be interpreted as "personal injury". *Wilson v. Garcia* at 284; and application of different State statutes of limitations as "relying on State's wisdom in setting a limit..." to "reflect value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting prosecution of stale ones...", *Wilson v. Garcia* at 281, citing *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 463-464 (1975).

It is necessary to notice that it is not Petitioner's fault that he discovered subjecting him to medical battery of radiation therapy as primary treatment requiring additional surgery without his knowledge and consent on about November 5, 1996 from Dr. Laursen's affidavit pleaded in Complaint, Facts 56-57 (App.70), as on April 9, 1993, this is prior to surgery of April 15, 1993 after radiation therapy, when Respondent Dr. Kotler told Petitioner that they have to replace anterior mandible with fibula from Petitioner's lower leg, an attorney, specializing and experienced in medical malpractice, refused to even investigate Petitioner's case (Fact 63 (App.74)). Petitioner contacted prior to obtaining Dr. Laursen's affidavit over 100 attorneys and about 200 physicians/health care centers nationwide. Even attorneys who had reviewed Petitioner's medical

record could not obtain supporting affidavits and did not disclose this fact (Cmpl.A44, A72, A80 - attorneys' letters). Facts 65, 74 (App.74)

Even supporting Petitioner Dr. Ward in his affidavit of September 30, 1996 (Cmpl.A374) did not disclose that radiation was primary treatment requiring additional surgery. He, however, addressed that in his affidavit dated April 18, 2000 against Hospital (Cmpl.A715d at A715f), when Petitioner brought that fact to his attention after discovering that fact from Dr. Laursen's affidavit (App.65-67).

The value judgment is based upon physician's/ hospital's duty to obtain informed consent from patient before subjecting to medical procedure

> Doctors have fiduciary relationship in which the patient normally reposes a great deal of trust and confidence in the doctor, based upon that the former is learned, skilled and experienced in those subjects about which the latter ordinarily knows little or nothing, but which are of the most vital importance and interest to him, since upon them may depend the health, or even life, or handicapped life in pain and suffering, of himself or family; therefore the patient must necessarily place great reliance, faith, and confidence in the professional word, advice, and acts of the physician. *Witherell v. Weimer*, 85 Ill.2d 146, 159 (1981).

And it is physician's duty to disclose any negligence:

> If the treating physician/hospital should discover his or her own negligence, it is that physician's/hospital's duty to fully disclose the negligence and its ramifications... If the physician

should purposely conceal the discovery of the negligence, neither the statute of limitations nor the statute of repose is triggered. In the cases of nondisclosure, the fraudulent concealment provision in section 13-215 of the Code efforts the patient five years after discovery of the cause of action to commence the suit. *Cunningham v. Huffman* (1993), 154 Ill.2d 398 at 407-408.

In spite of 100% evidence of subjecting Petitioner to radiation as primary treatment requiring additional surgery without Petitioner's knowledge and consent "Plan continues ¢ prim treatment ¢ radiation" (Cmpl.A160), Respondents doctors in their perjurious affidavits of August 2, 1996 and September 6, 1996 (Cmpl.A318, A323) fraudulently concealed fact that radiation therapy was primary treatment requiring additional surgery, and Respondents did not admit that fact until present, in spite of affidavits of Dr. Laursen and Dr. Ward, therefore

the fraudulent concealment continued until at least November 25, 1996, when Respondents withdrew perjurious affidavit of Drs. Galinsky and Wenig canceling radiation therapy as primary treatment (Cmpl. Fact 98 (App.83)) incorporated in all Counts (App.84-86), and also pleaded in Count IV, ¶145 (App.88).

Because Petitioner discovered subjecting him to radiation therapy as primary treatment followed additional surgery on about November 5, 1996 from Dr. Laursen's affidavit, that makes Complaint filed timely on November 1, 2000, pursuant to 42 U.S.C. section 1988 and applicable 735 ILCS 5/13-212 and following 735 ILCS 5/13-215.

2. Denying access to courts: Court of Appeals ruling: ...The clock on federal civil rights claims begins to run when the plaintiff becomes aware of his injury *Bishop v. Gainer*, 272 F.3d 1009, 1014 (7th Cir. 2001). Ross argued in state court as early as September 1997 that the attorneys in his case were conspiring against him... He did not file his federal complaint until November 1, 2000, and the district court properly found these claims barred by untimeliness. (App.34 at 37-38),

this is, on the same bases as District Court (App.42-43). *Bishop v. Gainer*, 272 F3.d 1009, 1014 (7th Cir.2001), Court of Appeals relied upon, says "The statute of limitations begins to run on the accrual date, which, in federal question cases, is the date the plaintiff discovers he is injured.". It is not just misapplication of the law, it is intentional suppression of facts presented above and claims of conspiracy pleaded in the Complaint, ¶204 "until present", the time of filing Complaint on November 1, 2000 (App.107), including direct conspiracy to deny access to courts with Appellate Court, which did not accrue until at least December 15, 1998 ruling, as it is absurd that Petitioner could be aware in 1997 of injury in 1998.

The injury by conspiracy in Circuit Court did not make Petitioner aware and did not nullify injury caused by direct conspiracy of all Respondents with State represented by Appellate Court, which occurred within 2 years of filing Complaint, as Appellate Court as the superior Court had obligation to reverse denying Petitioner access to courts through conspiracy to have his medical malpractice suit adjudicated upon merits.

If Appellate Court reversed conspiratorial dismissal by Circuit Court instead of continuing the conspiracy, then the injury in 1997 by State represented by Circuit Court would become the final injury triggering running of statute of limitations on account of denying access to courts, like

e.g. in *Bagley v. CMC Real Estate Corp.*, (9th Cir.) 923 F.2d 758, 761-762, where the court held that statute of limitations accrued when Bagley first learned of the injury giving rise to his claims, and not after successful appeal (habeas corpus proceeding) and releasing him from prison.

The same applies to Illinois Supreme Court as superior Court, which denied leave to appeal on June 2, 1999 (Cmpl.A643) claims of conspiracy (e.g. Dck.29, PltfRespMoSumJudg, Exh.A762).

Furthermore, as provided in facts, following conspiracy in Circuit Court and Appellate Court of al Respondents, Bollinger and Krause pursued on January 24, 2000 *res judicata* and that the Defendant is not the Hospital of the University of Illinois but the Board of Trustees (App.109-112)

resulting in injury of dismissal of Hospital's superior responsibility on account of actions of its agents and/or employees on March 2, 2000 on bases of *res judicata*, and then injury of converting Petitioners suit against Hospital of the University of Illinois to suit against Board of Trustees on September 15, 2000 (Cmpl., Fact 120 (App.83-84)), in violation of 74 Ill. Adm. Code, Section 790.20 and 735 ILCS 5/2-104, this is just only 1-1/2 month of filing Complaint on November 1, 2000 and less than one year of filing by Krause and Bollinger their fraudulent motion to dismiss.

All that makes filing Complaint, Counts VI-VIII timely on its face. When violations of civil rights constitute one continuing wrong the cause of action does not accrue until the last overt act in furtherance of conspiracy resulting in last damage/injury to plaintiff. *Wilson v. Giesen*, (7th Cir. 1992), 956 F.2d 738, 743; *White v. Bloom*, (8th Cir. 1980), 621 F.2d 276, 281, certiorari denied 449 US 995, 66 L.Ed.2d 292 - what makes decision in conflict with other Court of Appeals and with own official decisions.

3. State: Court of Appeals by ruling: "...The district court further dismissed Ross's claims that the State of Illinois denied him access to the courts and failed to protect his civil rights, observing that sovereign immunity barred Ross's suit against the State of Illinois. *See Hans v. Louisiana*, 134 U.S. 1, 15-16 (1890)... The State of Illinois is not a "person" under sections 1983 and 1985 and is thus not subject to suit... Consequently, we VACATE the district court's dismissal of Ross's suit against the State of Illinois for lack of subject matter jurisdiction and REMAND with instructions to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). We AFFIRM the judgment of the district court as to all other defendants. (Appendix, p.34 at 38-39)

constitutes total suppression of Petitioner's claims against State from the point of view of facts.

In District Court the State raised only granted argument of lack of subject matter jurisdiction based upon 11th Amendment immunity that State may not be sued without State's consent, (App.113), and in its reply brief (App.117), ignoring totally Petitioner's argument that State is a person under 42 U.S.C. § § 1983, 1985, 1986 (Dck.117, PlfResp., p.6-7),

and vacating by Court of Appeals District Court's Order cannot change that fact and history of dismissing State on November 8, 2001 (App.40- 41) on bases of 11th Amendment immunity of not consenting State, giving Petitioner right to bring this argument for decision by this Court.

Both, the Eleventh Amendment and Eleventh Amendment doctrine are freaks of History resulting from extreme financial crises of the States as aftermath, initially after American Revolution

> "It is part of our history that, at the adoption of the constitution, all the states were greatly indebted; and the apprehension that these debts might be prosecuted in the federal courts, formed a very serious objection to that instrument... Suits were instituted; and the court maintained its jurisdiction... *Cohen v. Virginia*, 19 U.S. (6 Weat.) 264, 406-07 (1821).
>
> In *Chisholm v. Georgia*, 2 Dall. 419 (1792), a citizen of South Carolina sued the State of Georgia... This decision was followed by the adoption of the Eleventh Amendment... *Hans v. Louisiana*, (1890) 134 U.S. 1, 5.

and then after Civil War, when, especially Southern States, were very devastated by Civil War.

Following Civil War the Congress in Act of March 3, 1875, c. 137, §1, 18 Stat. 470 effectively gave federal district courts general federal question jurisdiction "That the Circuit Courts of the United States shall have original cognizance... of all suits... arising under the Constitution or laws of the United States..." as to all and any parties, today 28 U.S.C. §1331.

In 1884 a suit, under federal question for violation of Contract Clause of the Constitution, Article 1, Section 10 - "No state shall pass a law impairing the Obligation of Contracts", was brought to federal court against State of Louisiana by resident of that State. *Hans v. Louisiana*, (1890) 134 U.S. 1.

State of Louisiana issued bonds under 1874 amendment to State's Constitution assuring payments of interest through exercise of judicial power when necessary, then levied and collected taxes to pay off the bonds, then however, by amending constitution in 1879 invalidated the contract of interest payments due 1880. *Hans* at 2-3.

Decision in *Hans v. Louisiana*, (1890) 134 U.S. 1 preventing suing a State by own citizen under federal question without State's consent was wrongfully decided, as it violates mandatory 11th Amendment's "the judicial power of the United States shall not be construed to extend to any suit...", violates Constitution of Article 3, Section 2 grant of jurisdiction, of Article 5 vesting power to amend the Constitution by ¾ of States' Legislatures or Conventions of ¾ of several States and of Article 6 that the Constitution is the Supreme Law.

If the 11th Amendment was to provide that a State can only be sued if it consents, the 11th Amendment would have to include "consent" as a provision to override mandatory "shall not be construed to extend...", the same way as, e.g., the Article 1, Section 10, paragraphs 2 and 3 of the Constitution "No State shall, without the Consent of the Congress...", therefore, there is no doubt that drafters did not intend to include State's consent.

Congress using its legislating powers under Section 5 of Fourteenth Amendment provided laws to reach State in 42 U.S.C. Section §§1983, 1985, 1986, under 28 U.S.C., §§1331 (federal question), which provide in pertinent parts:

> §1331 The district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.
>
> §1983 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State... subjects... any citizen of the United States... within the jurisdiction thereof to the depravation of any rights... secured by the Constitution and laws, shall be liable to the party injured in an action at law...
>
> §1985(3) If two or more persons in any State or Territory conspire... for the purpose of depriving, either directly or indirectly, any person... of the equal protection of the laws... if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right... of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages...
>
> §1986 Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do... shall be liable to the party injured...

Local governments are persons under §1983

Monell v. New York City Dept. of Soc. Serv., (1987) 436 US 658, 689-690. And States are "persons" as "political bodies" in meaning of §1983 under Dictionary Act of Feb. 25, 1871, §2, 16 Stat. 431. *Will v. Michigan Dept. of State Police*, (1989) 491 U.S. 58, 78 as part of Justicies Brennan and Stevens dissenting *Will* at 71-94

And State was a person in *Hans v. Louisiana*, (1890) 134 U.S. 1, as the State of Louisiana sought relieve by reason of a person - "*ratione personae*". *Id.* at 3. Black's Law Dictionary, 6 Addition, published in 1990 defines *ratione personae* as "By reason of the person concerned; from the character of the person.".

State is the only "legal actor" exempted, under false interpretation and construction of the Eleventh Amendment, in disregard to purposes and interests secured by federal laws, from any prosecution in federal courts. *Atascadero State Hosp. v. Scanlon*, (1985) 473 U.S. 234 at 248:

"Eleventh Amendment doctrine diverges from text and history virtually without regard to underlying purposes or genuinely fundamental interests. In consequence, the Court has put the federal judiciary in the unseemly position of exempting the States from compliance with laws that bind every other legal actor in our Nation." - Justice Brennan dissenting. *Atascadero* at 248; also *Welch v. Texas Highways & Public transpo. Dept.*, (1987) 483 U.S. 468, 497, (Justice Brennan dissenting).

If not for severe difficulties after American Revolution and severe devastation after Civil War, condition not applicable today, there would be no *Chisholm v. Georgia*, (1792) 419, 428, no *Hans v. Louisiana*, (1890) 134 U.S. 1 and no 11th

Amendment and its flawed doctrine, because "a State is a "moral person", as it is an assemblage of individuals, who are moral persons". *Chisholm v. Georgia*, (1792) 2 Dall. 419, 428, who would not deprive peoples of their money.

The decision in *Hans v. Louisiana*, (1890) 134 U.S. 1 that under 11th Amendment immunity a State cannot be sued without its consent letting the State of Louisiana get away with fraud and violation of the Constitution was bases upon:

> "...to deprive legislature of the power of judging what the honor and safety of the State may require, even at the expense of **a temporary failure to discharge the public debts**, would be attended with greater evils than such failure can cause." *Hans* at 21,

As evidenced, decision in *Hans v. Louisiana* was only temporary, reached only suits on defaulted bonds/contracts (Constitution, Article 1, Section 10), and, further, did not effect any other suit against State under federal question, as:

> The Eleventh Amendment declares that "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens of any foreign State." This is limitation upon the exercise of judicial power in the cases named. **Upon no principal of construction can the limitation be applied to other cases.** No change in the Constitution was made in any other respect. *Hans v. Louisiana*, (1890) 134 U.S. 1, 5.

If States, when forming the Union, were to main-

tain their sovereignty against suits by citizens under federal question, the jurisdiction of federal courts would not have been included in the Constitution, Article 3, Section 2 in the first place, to avoid necessity of revoking it later by 11th Amendment and flawed 11th Amendment doctrine:

> "The powers of the Union, on the great subjects of war, peace and commerce, and on many others, are in themselves limitations of the sovereignty of the states; but in addition to these, the sovereignty of the state is surrendered, in many instances, where the surrender can only operate to the benefit of the people, and, where, perhaps, no other power is conferred on congress than a conservative power to maintain the principals established in the constitution. The maintenance of these principals in their purity, is certainly among the great duties of the government. One of the instruments by which this duty may be peaceably performed, is the judicial department. It is authorized to decide all cases of every description, arising under constitution or laws of the United States. **From this general grant of jurisdiction, no exception is made of those cases in which a state may be a party**..." *Cohen v. Virginia*, 19 U.S. (6 Weat.) 264, 382 (1821)

Exempting the States (State representatives across the board) from compliance with laws violates also Petitioner's rights under United Nations International Covenant on Civil and Political Rights, Part II, Article 2, Part III, Article 7, Part III, Article 8, ¶2, ratified by the United States (App.51-52) on account of subjecting Petitioner to heinous battery (App.70-74, Facts 55-61) of magnitude condemned by hanging by US Military Tribunal at Nuremberg

Trials *USA v. Brandt et. al.*, Nuremberg, Germany (August 20, 1947)- (www.ushmm.org/research/doctors/index.htm), and denying access to courts and equal protection of law in outrageous ways, like

discussion in open court of attorneys with the Circuit Court how to dismiss Petitioner's entire cause of action with prejudice through fraud (App.93-101, Cmpl.Facts 186-187);

filing motion for summary judgment supported by Respondents doctors own perjurious affidavits to dismiss under 735 ILCS 5/2-619(9) and unconstitutional 735 ILCS 5/2-622(g) (App.88-91; 56-57) with Circuit Court's support denying subpoena hostile expert Dr. Schabinger on bases of harassment and tempering with Petitioner's hostile expert physicians, resulting in refusal of attorney recommended by Dr. Schabinger himself to take Petitioner's case (App.76-83; Cmpl.Facts 92-98), etc.

In spite of Petitioner's complains, none of Respondents was sanctioned by any State's disciplinary board or commission. (Cmpl. A118-126(a))

One of consequences of violations by States the 14th Amendment with total impunity (it applies, Petitioner' contends, also to federal courts) and impunity of, e.g. remaining Respondents, and others, e.g. Dr. Scott, Petitioner consulted, and who very arrogantly stated that he would treat [violate] Petitioner the same way (App.60-64), is, that

after a century long use of radiation in treatment of cancers [5] and in spite of all advancements in past 30 years [1960-1990], 5-year survival rate of oropharyngeal cancer, the largest subgroup of head and

---

[5] external radiation is applied since 1896 (Cmpl.A589); implants since 1901 (Cmpl.A585)

neck cancers, is only 52% for Caucasians and for African Americans it even decreased to 31%, totaling 11,000 deaths from head and neck cancers predicted for 1992[6], in one of the most agonizing ways imaginable (App.60 at 62), what does not include surviving victims like the Petitioner.

In 1975, the cost of treatment of all cancers by all methods was estimated to be 4.13 billions of dollars. Total cost of subsequent treatment and other direct and indirect costs, like loss of future earnings, was estimated in 1975 to be 23.15 billions of dollars [6].

Over the decades the numbers are staggering as to deaths and costs. Cost of health care and its insurance can be minimized by prosecution of violators, not by ruining life totally and depriving justice and means of salvaging life victims like Petitioner, through obliteration of the Rule of Law by courts.

4. Summary: Courts are organs of the government belonging to judicial department/branch, whose function is the interpretation, construction, application, general administration and enforcing of the laws to controversies brought before them, to provide public administration of justice, as defined under "court" and "justice" by Black's Law Dictionary, 6th Addition published 1990, and

all courts have the obligation to guard, enforce, and protect every right secured by the Constitution of the United States. *PI Enterprises, Inc. v. Cataldo*, (C.A. 1st Cir. 1972) 457 F.2d 1012, 1014.

No protection of rights secured by the Constitution and no justice is provided by courts through

---

[6] Dock.83, "Exhibits "B", Exhibit T-A615

suppression or alteration of facts, or false interpretation, construction, application, general administration and enforcement of laws, therefore,

the decision of Court of Appeals suppressing stated in the Complaint, Counts I, III-IV claims of medical battery of subjecting to radiation as primary treatment requiring additional surgery without Petitioner's knowledge and consent, and dismissing them on bases of not applicable *res judicata*, in spite that those claims were not even part of the state Complaint, additionally, an argument never raised by Respondents and rebutted by Petitioner in response to *Rooker-Feldman doctrine*;

the decision of Court of Appeals affirming District Court's dismissal of claims of conspiracy to deny Petitioner access to State courts, Counts VI-VIII of the Complaint, on bases that Petitioner was aware in 1997 of injuries in 1998, 1999, 2000 caused by State through rulings of Appellate Court, Illinois Supreme Court and Court of Claims in furtherance of conspiracy with all remaining Respondents;

the decision of Court of Appeals imposing on District Court to alter its November 8, 2001 decision of dismissal of Petitioner's suit against the State under Fed.R.Civ.Pro. Rule 12(b)(1) and 11th Amendment immunity of not consenting State to dismissal under Fed.R.Civ.Pro. Rule 12(b)(6) that State is not a person under 42 U.S.C., §§1983, 1985, 1986, in spite that the State not only never raised such argument in District Court but also ignored in District Court such Petitioner's argument

all constitute suppression and/or alteration of facts, pleadings and history depriving Petitioner access to courts to have his claims adjudicated upon merits, violating 14th Amendment to the Constitution, therefore, have so far departed from

the accepted and usual course of judicial proceedings, as to call, as provided by Rule 10(a), for an exercise of this Court's supervisory power;

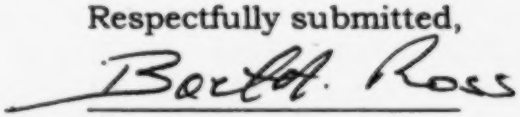
- decision in *Wilson v. Garcia*, 471 U.S. 261 at 276 (1985) adopting for 42 U.S.C. §1983 claims state statute of limitations for personal injury, applied to Petitioner's case by District Court to claims of medical battery, Counts I, III, IV of the Complaint, requires revision by this Court as violating constitutional separation of powers;

- interpretation and construction of the Eleventh Amendment that its mandatory provision "Judicial power of the United States shall not be construed to extend to any suit..." provides and constitutionalizes grant of general sovereign immunity under ancient state's common laws, preventing suing the State by own citizen under federal question without State's consent, applied by District Court, requires revision by this Court as violating the Constitution itself and constitutional separation of powers;

- interpretation and construction that State is not a person in meaning of 42 U.S.C., Sections 1983, 1985 and 1986 requires revision by this Court.

WHEREFORE, the Petitioner, BART A. ROSS prays that his Petition for Writ of Certiorari be granted.

Respectfully submitted,



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APPENDIX

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UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53
United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 11, 2002*

Decided September 26, 2002

Before
Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. FRANK H. EASTERBROOK~ *Circuit Judge*
Hon. DANIEL A. MANION, *Circuit Judge*

No. 01-4281
BART A. ROSS,
Plaintiff-Appellant,
Eastern Division
v.
STATE OF ILLINOIS, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois,
No. 00 C 6818
David H. Coar,
Judge.

ORDER

In 1992 doctors at the University of Illinois at Chicago Hospital diagnosed Bart Ross with oral cancer. Ross received a course of external radiation treatment, followed by a four-day course of radiation

---

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* Fed. R. App. P. 34(a)(2).

treatment by implant. The tumor responded well to radiation therapy, and doctors were optimistic that Ross would make a full recovery. Unfortunately, the cancer recurred, and this time Ross required radical surgery. His teeth were extracted, and part of his jawbone was removed, along with some surrounding tissue from his mouth. This surgery left Ross disfigured.

In 1995 Ross filed a medical malpractice action in Illinois state court, alleging that his doctors had been negligent in the diagnosis and treatment of his cancer. The court dismissed the suit on statute of limitations grounds but gave Ross leave to amend his complaint to show the timeliness of certain allegations.

Ross fired his attorney and, instead of pleading additional facts to establish timeliness, argued that his attorney had conspired with the court to defeat his claim. The court entered a final dismissal order, and the Illinois Appellate Court affirmed.

Finding no satisfaction in Illinois state court, Ross turned to federal court where he filed claims under 42 U.S.C. § § 1983, 1985, and 1986 against his doctors, their attorneys as well as his own attorney, the University of Illinois at Chicago Hospitals and Clinics, and the State of Illinois. The district court dismissed Ross's suit against the State of Illinois based on sovereign immunity and granted summary judgment for the rest of the defendants based on statute of limitations grounds. Ross appeals, contending that the district court was prejudiced against him and requesting that his case

be remanded to a different judge for further proceedings.

The district court ruled that Ross's civil rights claim against his doctors and the hospital were barred by the statute of limitations. Ross complained of treatment he received in 1992 and 1993, and a final order dismissing his state malpractice claim was issued in 1997. Ross's section 1983 action was governed by the Illinois statute of limitations for personal injury claims, *see Wilson v. Garcia*, 471 U.S. 261, 276 (1985), which is two years, 713 ILCS 5/13-202. Ross did not file his civil rights claim until November 2000; he was aware of his alleged injuries well before November 1998, and so his section 1983 claim was untimely.

But this claim presents an additional problem: Ross has already litigated his medical malpractice claims in state court. Ross characterizes his federal action against his doctors and the hospital as an "excessive force and battery" claim under section 1983. His complaint, however, never explains how the handling of his illness amounted to a civil rights violation; it merely rehashes the allegations he presented in Illinois state court.

The doctors and the hospital argue that, under the *Rooker-Feidman* doctrine, the district court lacked subject matter jurisdiction to consider Ross's section 1983 claim. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983). The *RookerFeldman* doctrine generally bars plaintiffs from bringing section 1983 actions to remedy injuries *inflicted by* a state court's decision.

Jensen u. Foley, 295 F.3d 745, 747 (7th Cir. 2002). But the injury Ross claimed-excessive force and battery in violation of his civil rights-was allegedly inflicted by the doctors who treated his cancer, not by the state court. *See id.* at 747-48. Ross is dissatisfied with the outcome of his malpractice case, but he is not taking issue with what the state court *did.* He is taking issue with what the state court *declined to do:* the state court declined to grant him relief for an injury caused by actors other than the court. *Durgins v. City of East St. Louis,* 272 F.3d 841, 844 (7th Cir. 2001). Essentially, Ross was attempting to relitigate a suit that has already been decided against him;

he was barred from doing so not by *Rooker.Feldman* but by the doctrine of res judicata. *Durgins,* 272 F.3d at 844; *Nesses v. Shepard,* 68 F.3d 1003, 1004 (7th Cir. 1995). The district court rejected Ross's claims against his doctors and the hospital as untimely, but we affirm for the reasons outlined in this order. *See Peele v. Country Mutual Ins.* Co., 288 F.3d 319, 332 (7th Cir. 2002).

Nor did the *Rooker-Feldman* doctrine bar Ross's section 1985 and 1986 claims against the attorneys involved in his malpractice case. Ross accused both his attorney and the attorneys representing his doctors of conspiring to deny him relief in state court. These allegations presented an injury not at issue in the medical malpractice case. But the claims are untimely. The statute of limitations for a section 1985 claim is governed by state law, *Wilson v. Garcia,* 471 U.S. 261, 279 (1985), and so the Illinois two-year statute of limitations for personal injury claims applies in this

case, 735 ILCS 5/13-202; *Sanders v. Venture Stores, Inc.*, 56 F.3d 771,775 n.2 (7th Cir. 1995). The statute of limitations for a section 1986 claim is one year. 42 U.S.C. § 1986. The clock on federal civil rights claims begins to run when the plaintiff becomes aware of his injury. *See Bishop v. Gainer*, 272 F.3d 1009, 1014 (7th Cir. 2001). Ross argued in state court as early as September 1997 that the attorneys in his case were conspiring against him. He therefore needed to file his section 1985 claim by September 1999 and his section 1986 claim by September 1998. He did not file his federal complaint until November 1, 2000, and the district court properly found these claims barred by untimeliness.

The district court further dismissed Ross's claims that the State of Illinois denied him access to the courts and failed to protect his civil rights, observing that sovereign immunity barred Ross's suit against the State of Illinois. *See Hans v. Louisiana*, 134 U.S. 1, 15-16 (1890); *see also Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). But it was not necessary to reach the issue of immunity to dismiss these claims. *See Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 779 (2000) (whether a statute itself permits the cause of action it creates to be asserted against a state logically precedes the sovereign immunity question). The State of Illinois is not a "person" under sections 1983 and 1985 and is thus not subject to suit. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70-71 (1989); *Collier v. Illinois Dep't of Human Rights*, 221 F.3d 1338 (7th Cir. 2000); *Johnson v. Supreme Court of Illinois*, 165 F.3d 1140, 1141 (7th Cir. 1999). Consequently, we

VACATE the district court's dismissal of Ross's suit against the State of Illinois for lack of subject matter jurisdiction and REMAND with instructions to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). We AFFIRM the judgment of the district court as to all other defendants.

United States District Court, Northern District of Illinois
00 C 6818
Date of entry: November 8, 2001

ORDER

Bart Ross sued, among others, the State of Illinois, for various injuries that he suffered. On November 21, 2000, Illinois filed a motion to dismiss based on Eleventh Amendment Immunity. After Illinois filed its brief Ross voluntarily dismissed Illinois as a party because he was pursuing an original action against the state in the Supreme Court of the United States. The United States Supreme Court refused to hear Ross's suit.

Undeterred by the Supreme Court's rebuff, Ross sought and obtained leave from this Court to reinstate Illinois as a defendant. The time is now ripe to address Illinois' motion to dismiss for lack of subject matter jurisdiction. For the reasons stated below, this Court GRANTS the State of Illinois' Motion to Dismiss. Further, for its decision, the Court relies entirely on the opening brief and Ross's amended response. Consequently, this Court DENIES Ross's motion to strike the State of Illinois' reply as MOOT.

The Eleventh Amendment prohibits citizens of one state from suing one of the other United States in federal court. See U.S. Const. amend. XI. The principle underlying Eleventh Amendment immunity has been extended to bar suits by citizens of a state against their own state. See Hans v. Louisiana, 134

U.S. 1 (1890). Unless the United States Congress expressly has overridden this immunity or the state has consented to be sued, federal courts lack subject matter jurisdiction. See Pennhurst State Sch. & Hosv. v. Halderman, 465 U.S. 89, 119-20 (1984).

Illinois has not consented to suit either expressly or by conduct. Also, Ross does not seek relief under statutes showing that Congress has abrogated a state's Eleventh Amendment immunity. Essentially, Ross's argument boils down to this: (1) he doesn't like the way that the Supreme Court has interpreted the Eleventh Amendment immunity doctrine; and (2) he thinks that lack of" subject matter jurisdiction" should not preclude his suit because Illinois is not a "subject matter" but a party.

As to the first point, the Court declines Ross's invitation to reexamine settled Supreme Court authority on this issue. Second, notwithstanding Ross's observation that legalistic English sometimes does not jibe with the laymen's English, that also is no basis for ignoring controlling Supreme Court authority. Ross may not sue the State of Illinois in this Court for damages absent the state's consent. For these reasons, the Court GRANTS the State of Illinois' Motion to Dismiss.

United States District Court, Northern District of Illinois
00 C 6818
Date of entry: July 23, 2001

ORDER

Bart Ross filed suit against various individual and governmental defendants alleging violations of his rights under the Thirteenth, and Fourteenth Amendments and Section 1983, Section 1985, and Section 1986 of the United States Code. His allegations related to medical treatment that he received in 1992 and 1993 and to a malpractice case in the mid-to-late-1990s regarding that treatment. The state of Illinois has been voluntarily dismissed from the case. All remaining defendants and Ross have moved for summary judgment. Because Ross's lawsuit is untimely, the Court GRANTS the defendants' motions and DENIES Ross's motion for summary judgment. All other pending motions are DENIED as moot.

Ross's action to enforce constitutional his rights under Section 1983 must be brought within the time period prescribed by Illinois' personal injury statute of limitations. See. e.g., Wilson v. Garcia, 471 U.S. 261, 276 (1985);Kalimara. v. Illinois Dep't of Corrections, 879 F.2d 276, 277 (7th Cir. 1989). The same time period applies for actions under Section 1985. See. e.g. Kness v. Grimm, 761 F. Supp. *513,* 519 (N.D. Ill. 1991). That period is two years. See 713 IL[illegible] 5/13-202.' While these federal provisions look to state law to determine the limitations period,

federal law determines the time when the period begins to run — namely, when a plaintiff knows or reasonably should have known of their constitutional injuries. See. e.g., Wilson v. Giesen, 956 F.2d 738, 740 (7th Cir. 1991). And, for conspiracy actions, the period begins to run on the date of the last act that caused him injury that was in furtherance of the conspiracy. See Vitale v. Nuzzo, 674 F. Supp. 402, 404 (D. Conn. 1986).

Ross filed his federal-court complaint on November 1, 2000. To be timely, he could not have known or should not have known of the alleged wrongs before November 1, 1998. Ross complains about actions that the doctor defendants committed during his treatment in 1992 and 1993. He was aware of the alleged wrongfulness of these acts at least by the time that he sued them in state court for malpractice, well before November 1, 1998. He also complains about actions his attorney took as part of an alleged conspiracy. Ross was aware of those acts, though, in late 1997 as evidenced by his statement in open court accusing his attorney and the court of conspiring to deprive him of his rights. All of these acts occurred outside of the applicable limitations periods. Accordingly, the Defendants' motions for Summary Judgment are GRANTED and Ross's Motion is DENIED.

United States District Court, Northern District of Illinois
00 C 6818
Date of entry: November 20, 2001

ORDER

[Other docket entry] Plaintiff's Motion Rule 60(a), Rule 60(b)(1) (3) (6) as to Order, Docket Entry and Minute Order of November 7, 2001 and Amendment to Plaintiff's Motion Rule 60(a), Rule 60(b)(1),(3),(6) as to order, docket entry and minute order of November 7, 2001, to include in order, docket entry and judgment in a civil case, all on November 8, 2001 - both, motion and amendment to the motion are DENIED.

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United States District Court, Northern District of Illinois
00 C 6818
Date of entry: October 22, 2001

ORDER

[Other docket entry] Plaintiff's Motion to Vacate in part order of July 23, 2001 as to granting defendants motions for summary judgments is Denied for the reasons stated on the record.

United States District Court, Northern District of Illinois
00 C 6818
Date of entry: September 13, 2001

ORDER

[Other docket entry] Plaintiff's Motion Rule 60(b) to Modify and Vacate in Part order of July 23, 2001, as to defendants Drs. Briele, Brunngraber, Wenig, Kotler and University of Illinois Hospital, Counts I and III-IV is DENIED for reasons stated on the record. Plaintiff's oral motion to strike language contained in the order of 9/14/01 [doc #124] is granted. The following sentence of document #124 is vacated and stricken: "Plaintiff's Second Motion to Release Plaintiff from erroneously filed Notice of Appeal is Denied".

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United States District Court, Northern District of Illinois
00 C 6818
Date of entry: September 4, 2001

ORDER

[Other docket entry] Plaintiff's motion to modify and vacate in part order of July 23, 2001, as to defendants Drs. Briele, Brunngraber, Wenig, Kotler and University of Illinois Hospital, counts I and III-IV is denied. Plaintiff's motion to modify and vacate in part order of July 23, 2001, as to counts V-VII is denied.

Plaintiff's second motion to release plaintiff from erroneously filed notice of appeal is denied. Defendants' motion Rule 54(b) order is denied.

United States District Court, Northern District of Illinois
00 C 6818
Date of entry: August 14, 2001

ORDER

[Other docket entry] Plaintiff's motion to modify and vacate in part order of July 23, 2001 is denied. Second plaintiff's motion to modify and vacate in part order of July 23, 2001 as to defendants Drs. Briele, Brunngraber, Wenig, Kotler, and University of Illinois Hospital, counts VI-VII and additional reasons to modify and vacate in part order of 7/23/02, as to defendants Dr. Galinsky, Lysaught, O'Leary, Krause, Bollinger, as to counts VI-VII is Denied. Plaintiff's motion to reinstate the State of Illinois as a defendant is granted. Reinstate case as to defendant State of Illinois. Plaintiff's response to defendant's motion to dismiss [15-1] is due 9/4/01. Reply is due 9/25/01. Defendant's motion to dismiss plaintiff's complaint is taken under advisement.

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United States District Court, Northern District of Illinois
00 C 6818
Date of entry: October 18, 2002

ORDER

Pursuant to the Mandate of the Seventh Circuit of Appeals, the Order of November 8, 2001 is VACATED. The State of Illinois is dismissed for plaintiff's failure to state a claim.

United States Court of Appeals For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT- WITHOUT ORAL ARGUMENT
Date: September 27, 2002

BEFORE:
Honorable JOHN L. COFFEY, Circuit Judge
Honorable FRANK H. EASTERBROOK, Circuit Judge
Honorable DANIEL A. MANION, Circuit Judge

No. 01-4281

BART A. ROSS,
Plaintiff - Appellant
V.
STATE OF ILLINOIS, MARGARET O'LEARY, EILEEN LYSAUGHT, and MICHAEL KRAUSE,
Defendants - Appellees

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 00 C 6818, David H. Coar, Judge

The judgment of the District Court is AFFIRMED in part, and VACATED and REMANDED in part, in accordance with the decision of this court entered on September 26, 2002. Each party shall bear their own costs.

United States Constitution, Article 1, Section 10.

Article 1, Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such Imminent Danger as will not admit of delay.

United States Constitution, Article 3, Section 2

Article 3, Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;... - between a State and Citizens of another State;...

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall

have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to the Law and Fact, with such Exceptions and under such Regulations as the Congress shall make...

United States Constitution, Article 5

Article 5. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all Intents and Purposes, as Part of This Constitution, when ratified by the Legislatures of the three fours of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

United States Constitution, Article 6

Article 6. ...This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all the Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall e bound thereby, any Thing in the Constitution or Laws of any State to the Contrary

notwithstanding. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution...

United States Constitution, Amendment 7

In Suits, at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

United States Constitution, Amendment 11

Amendment 11. The Judicial power of the United States shall not be construed to extend to any suit in law and equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

United States Constitution, Amendment 13

Amendment 13. Section 1. Neither slavery nor involuntarily servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within United States, or any place subject to their jurisdiction.

Section 2. Congress shall have the power to enforce this article by appropriate legislation.

United States Constitution, Amendment 14

Amendment 14. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. Congress shall have the power to enforce this article by appropriate legislation.

United Nations International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49, ratified by United States on June 8, 1992.

Part II, Article 2:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Part III, Article 7:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Part III, Article 8, ¶2:

No one shall be held in servitude.

18 U.S.C. §3281 "Capital offenses". An indictment for any offense punishable by death may be found at any time without limitation.

28 U.S.C. §1331 "Federal question". The district court shall have original jurisdiction of all civil

actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1343 "Civil rights and elective franchise". (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (1) To recover damages for injury to his person or property, or because of the depravation of any right or privilage of a citizen of the United States, by any act done in firtherance of any conspiracy mentioned in section 1985 of Title 42; (2) To reocover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occure and power to prevent; (3) To redress the depravation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

42 U.S.C. § 1983 "Civil action for depravation of rights". Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the depravation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

42 U.S.C. §1985 "Conspiracy to interfere with civil rights". (3) If two or more persons in any State or Territory conspire or go disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws;... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or depravation, against any one or more of the conspirators.

42 U.S.C. §1986 "Action for neglect to prevent". Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of

such wrongful neglect or refusal may be joined as defendants in the action;... But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C. § 1988. (a) Applicability of statutory and common law. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 12, 24, 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and the laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and if it is of a criminal nature, in the infliction of punishment on the party found guilty.

720 ILCS 5/3-5(a) "General limitations". (a) A prosecution for first degree murder, second degree murder, involuntary manslaughter, reckless homicide, concealment of homicide death, treason, arson, aggravated arson, or forgery may be prosecuted at any time.

735 ILCS 5/2-104. Wrong venue-Waiver-Motion to transfer. (a) No order or judgment is void because rendered in the wrong venue, except in case of judgment by confession as provided in subsection (c) of Section 2-1301 of this Act. No action shall abate or be dismissed because commenced in the wrong venue if there is a proper venue to which the cause may be transferred.

(b) All objections of improper venue are waived by a defendant unless a motion to transfer to a proper venue is made by the defendant on or before the date upon which he or she is required to appear or within any further time that may be granted him or her to answer or move with respect to the complaint, except that if a defendant upon whose residence venue depends is dismissed upon motion of plaintiff, a remaining defendant may promptly move for transfer as though the dismissed defendant had not been a party.

(c) Motions for transfer to a proper venue may be supported and opposed by affidavit. In determining issues of fact raised by affidavits, any competent evidence adduced by the parties shall also be considered. The determination of any issue of fact in connection with a motion to transfer does not constitute a determination of the merits of the case or any aspect thereof.

735 ILCS 5/2-619. Involuntary dismissal based upon certain defects or defenses.

Section 2-619 of the Illinois Code of Civil Procedure provides in pertinent parts:

(9) That the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect or defeating the claim.

735 ILCS 5/2-622. Healing art malpractice. Section 2-622 of the Illinois Code of Civil Procedure provides in pertinent parts:

§622. (a) In any action... in which the plaintiff seeks damages for injuries or death by reason of medical, hospital, or other healing art malpractice, the plaintiff's attorney or the plaintiff... shall file an affidavit... declaring one of the following: 1. That the affiant has consulted and reviewed the facts of the case with a health professional... that the reviewing health professional has determined in a written report... that there is a reasonable and meritorious cause for the filing of such action;...

3.(d) When the attorney intends to rely on the doctrine of failure to inform of the consequences of the procedure, the attorney shall certify upon the filing of the complaint that the reviewing health professional has... concluded that a reasonable health professional would have informed the patient of the consequences of the procedure.

(g) The failure to file a certificate required by this Section shall be grounds for dismissal under Section 2-619;

735 ILCS 5/13-202 Personal injury - Penalty provides in pertinent parts:

Action for damages for an injury to the person, or for false imprisonment, or malicious prosecution, or for statutory penalty, or for abduction, or for seduction, or for criminal conversation, except for damages resulting first degree murder or the commission of a class X felony and the perpetrator thereof is convicted of such crime, shall be commenced within 2 years

next after the action accrued but such an action against a defendant arising from a crime committed by the defendant in whose name an escrow account was established under the "Criminal Victims' Escrow account Act", shall be commenced within 2 years next after the establishment of such account.

735 ILCS 5/13-212 Physician or hospital provides in pertinent parts: (a) Physician or hospital: Except as provided in Section 13-215 of this Act, no action for damages for injury... arising out of patient care shall be brought not more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of injury... but in no event shall such action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged.

735 ILCS 5/13-215. Statute of fraudulent concealment section 13-215 of the Illinois Code of Civil Procedure provides in pertinent parts:

Fraudulent concealment. If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards.

74 Ill. Adm. Code, Section 790.20. Pleadings and Practice. Except as herein otherwise provided, pleadings and practice shall follow the Illinois Code of Civil Procedure (Ill. Comp. Stat. 1992,

735 ILCS 5/1-101 et. seq.) and the revised Rules of the Supreme Court of Illinois (134 Ill. 2d R. 1 et seq.).

South Coast Tumor Institute
Ronald S. Scott, M.D., Ph.D. Medical Director
Certified: American Board of Radiology

July 26, 1996

Bart A. Ross
4542 N. Bernard Street
Chicago, IL 60625

Dear Mr. Ross:

I have received the documents and X-rays related to the treatment of your cancer of the floor of mouth. I have reviewed them rather carefully. I am unable to support your conclusion that there was either an error made, or any negligence on the part of the treating physicians. Indeed, I feel that the treatment you received was technically excellent.

To summarize:
1. The entire mouth, as well as draining lymphatics received 5,000 cGy of radiation using external beam technique, 6 MV photons at 100 cm. target skin distance.
2. An interstitial implant, using removable ^{192}Ir was placed to boost the primary tumor.
3. The dosage from the implant was calculated to deliver 3,000 cGy to the soft tissue and 1,620 cGy to the anterior floor of mouth where it abutted the gingival margin and the mandible.
4. The total dose to the mandibular periosteum and gingival ridge was, therefore, 6,620 cGy. The total dose to the central tumor mass was 9,000 cGy.

If, as you say, you have read on the care of cancer, you know that the dose of radiation commonly used to treat any carcinoma is in the range of 6,000 cGy to 7,500 cGy. Doses higher than this can lead to unacceptable complications. There are detailed nomographs which plot the dose-response for both tumor and normal tissue as a function of time. When radiation is given at the rate of about 1,000 cGy per week, a dose of 6,000 cGy will cause necrosis, in your case osteoradionecrosis of the mandible, in about 1% of patients. When the dose is increased to 7,500 cGy, the probability of necrosis rises to about 50%.

In the United States, the standard of care using radiation accepts necrosis at a rate of about 5%. If a physician, or department of radiation oncology causes necrosis in five patients per hundred treated, those physicians are practicing within the standard of the community. If they cause this complication in substantially fewer patients, they are probably treating less aggressively, and are curing fewer patients than they might. On the other hand, in certain situations, higher doses used judiciously, in an effort to obtain a cure when there is no other way to effectively cure a young and potentially vital patient. That was clearly the situation used for your care.

As the tongue and soft tissue of the mouth can tolerate higher doses than the bone of the mandible, you were treated with 9,000 cGy to the tongue and soft tissue. The dose to the bone was limited to 6,620 cGy, a dose which produces osteoradionecrosis in about 5% of patients. No more radiation should have been used. Your physicians were very aggressive,

and treated you with as high a dose as is reasonable, and no higher. The technical placement of the implant was excellent. I have not, in more than 20 years, seen many done more precisely. Patients are not machines. Physicians cannot "turn them off, fix them, and then restart them." We must operate on living, moving, breathing patients, and the resultant precision of our operations is limited by that fact.

As to the expected response to treatment, we need to examine the statistical outcome of patients treated during the past 10 years. Carcinoma of the mouth and neck occurs in about 75,000 people per year. Most of these are users of both tobacco and alcohol, which results in their being less healthy than they might be. Of these, 5,000 to 10,000 patients have cancer of the floor of the mouth. When treated with aggressive radiation, 60% are cured. Of the remaining 40%, about half can be salvaged with surgery. Overall, the cure rate is 75%. Despite aggressive treatment I with every method available, 25% of patients die from this disease. Having cared for hundreds of mouth and neck patients over the years, this is one of the most agonizing deaths you can imagine.

If we look more closely at the results of treatment, we see a pattern of who recurs and who does not. Patients with well differentiated cancers are much more likely to have persistent disease than those with poorly differentiated cancers. Poorly differentiated tumors are generally easier to control at the site of origin. On the other hand, poorly differentiated tumors are much more likely to spread. Therefore, while radiation may control a poorly differentiated cancer, there is a higher

probability that it will spread throughout the neck in an uncontrollable fashion than for a well differentiated tumor. Your cancer was well differentiated, so persistent disease is not unexpected, despite high dose radiation. On the other hand, the disease has not spread, and that is in your favor. Your clinical course has had no surprises.

The major factor is that you are alive and free of disease more than 2 years after diagnosis. This probably means that you are cured. We are not able to cure people of cancer without some after effects. From the pictures you sent, the results of your treatment appear to be acceptable, even if not to you.

My concern is your apparent complete lack of acceptance of your condition. I re-emphasize, nothing was done wrong in your treatment. It was a textbook approach, with excellent technical accomplishment. The outcome is well within that expected, both in terms of disease control and complications. You appear to be cured, and have been left in a functional state. Cancer does not choose its victims based on fairness, and neither money nor importance achieve cure. The classic case is Sammy Davis, Jr., a multimillionaire entertainer, who died of throat cancer less than 18 months after diagnosis despite the best aggressive radiation therapy and salvage surgery money could buy. I know that this has been difficult both physically and financially. However, your physicians did not cause your cancer. The cost and physical problems you have are the price of your life at our current level of ability.

From now on, the cost you pay in a fruitless attempt to blame those who helped you, indeed saved your life, is unnecessary cost. I have not ever been sued for malpractice, though I have made many mistakes. Most suits are brought because either the physician will not admit his mistake, or is callous in his regard to the normal consequences of his treatment. If a patient is to have an arm amputated due to gangrene, he expects to lose the arm, and is not surprised to find it missing after surgery. On the other hand, patients often do not understand the consequences of treatment where changes are more subtle, such as loss of the ability to speak clearly, or changes in appearance. If the things that have happened to you seem unfair, contact the American Cancer Society. They will put you in touch with a support group of others who have gone through treatment. You can compare notes, and I'm sure you will find that you are one of the more fortunate.

I regret that I cannot support your lawsuit. I am pleased to be able to say that even in retrospect, I would not have changed anything about your care. I genuinely hope you can accept that your current situation is as good as it will get, and you put your life back in order.

Sincerely yours,
Ronald S. Scott, M.D., Ph.D.
Radiation Oncologist

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

BART A. ROSS,
Plaintiff,
vs. NO. 95 L 07581
DR. HENRY BRIELE, DR. DENNIS GALINSKY, DR. EDWARD BRUNNGRABER, DR. HOWARD KOTLER DR. BARRY WENIG,
Defendants.

AFFIDAVIT OF GERALD P. LAURSEN, M.D.

STATE OF TEXAS)
COUNTY OF BEXAR)

Before Me, the undersigned authority, on this day personally appeared, GERALD P. LAURSEN, M.D., known to me to be the person whose name is subscribed before me and who upon being duly sworn and under oath did depose and state as follows:

"My name is GERALD P. LAURSEN, M.D. I am over the age of (21) twenty-one years, suffer no legal disabilities, have never been convicted of a crime, am of sound mind and am otherwise fully competent in all respects to make this Affidavit. The facts contained within this Affidavit are true and correct and within my personal knowledge. All of my opinions that follow are based upon my training and experience and upon a reasonable degree of medical care in the United States of America. I affirm that if sworn as a witness I can testify competently to the facts herein set forth.

I am a physician and have been licensed continuously in the State of Texas since 1977. I went to Medical School at the University of Oklahoma and did my residency in Otolaryngology at Bexar County Hospital in San Antonio, Texas. I have been board certified in Otolaryngology since 1981. I am a Clinical Professor of Surgery at the University of Texas San Antonio Health Science Center. I treat cancer patients with head and neck cancer as that which afflicted Mr. Dart Ross.

It is my opinion that no informed consent was obtained from Mr. Ross before selecting radiation therapy as the primary treatment modality. There are three methods of treatment for this cancer type-surgery, chemotherapy, and radiation therapy. If Mr. Ross was given appropriate comparisons of risks and advantages to each treatment modality, it is my opinion he would have not selected primary radiation for cure. I feel responsibility for informed consent was from Dr. Henry Brible, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr. Howard Kotler, and Dr. Barry Wenig.

This failure to obtain informal consent is a breach of the accepted standard of care and constitutes negligence, and this negligence resulted in unnecessary pain and suffering on the part of Mr. Bart Ross. It is my opinion that Mr. Ross' cancer was totally curable by surgery alone, and this would have not been anywhere near as radical as the actual surgery performed on Mr. Ross and would have not resulted in the conditions that he now suffers.

Furthermore it is my opinion that once surgical salvage for radiation failure was deemed necessary;

once again informed consent was not obtained to include risks and benefits of hyperbaric oxygen therapy and marginal mandibulectomy. The failure to give this informed consent resulted in considerable pain and suffering by Mr. Ross.

It is well known that dental disease is more prevalent following radiation therapy and the potential of osteoradionecrosis secondary to dental disease and dental extractions is very high following radiation therapy to the jaws. It is my opinion that Mr. Ross' treating physicians were negligent in not advising him as to the methods avoidance and prevention of his dental disease that was compounded by radiation therapy.

My opinions are based on the medical records, photographs, paper copies of x-rays and x-rays that are attached hereto as copies. Also the affidavit of Bart A. Ross."
FURTHER AFFIANT SAITH NOT.

Gerald P. Laursen, M.D. ,D.D.S. ,F.A.C.S.

Gerald P. Laursen, M.D.
2833 Babcock Rd.
Suite 340
San Antonio, Tx 78229

SWORN AND SUBSCRIBED TO before me by Gerald P. Laursen, M.D., D.D.S. this 5th day of November, 1996, to certify with my hand and seal of office.

NOTARY PUBLIC, STATE OF TEXAS
MARY E. GREEN MY COMMISSION EXPIRES July 25, 1999

[fragments]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BART A. ROSS,	)
	)
Plaintiff,	)
	)
vs.	)
NO. 00C 6818	)
	)
Jury Demand	
STATE OF ILLINOIS,	)
MARGARET O'LEARY, MICHAEL KRAUSE,	)
EILEEN LYSAUGHT, BARRY BOLLINGER	)
DR. HENRY BRIELE, DR. DENNIS	)
GALINSKY, DR. EDWARD BRUNNGRABER,	)
DR. BARRY WENIG, DR. HOWARD KOTLER,	)
and UNIVERSITY OF ILLINOIS AT CHICAGO	)
HOSPITAL AND CLINICS	)
	)
Defendants.	)

COMPLAINT AT LAW

NOW COMES the Plaintiff, BART A. ROSS, *pro se*, and complaining of the Defendants STATE OF ILLINOIS, MARGARET O'LEARY, MICHAEL KRAUSE, EILEEN LYSAUGHT, BARRY BOLLINGER, DR. HENRY BRIELE, DR. DENNIS GALINSKY, DR.

EDWARD BRUNNGRABER, DR. BARRY WENIG, DR. HOWARD KOTLER, and UNIVERSITY OF ILLINOIS AT CHICAGO HOSPITAL AND CLINICS, states as follows:

FACTS

9. Numbers **(A***)** in the text of this Complaint At Law refer to Exhibits numbered **(A5)** through **(A752).** The exhibits are supported by BART A. ROSS affidavit attached to this Complaint at Law (page 98). Numbering of exhibits is consistent numbering in Petition for Redress of Grievances, Supporting Memorandum of Law and Affidavit, Exhibit No. 1.

A. Facts of conspiracy, excessive force and battery during plaintiff's medical treatment

10. Between July 10, 1992 and June 2, 1993, defendants Dr. Henry Briele, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr. Barry Wenig, Dr. Howard Kotler cared for and attended plaintiff, Bart A. Ross at the University of Illinois at Chicago Hospital and Clinics, for squamous cell carcinoma of the floor of the mouth, then continued at the University of Illinois at Chicago Hospital and Clinics by other physicians until March 1995.

43. On March 29, 1993, surgeon Dr. Kotler told plaintiff "We have to replace anterior part of your mandible with fibula from your leg. It will be notched and bent into shape of your mandible."; Plaintiff said "A few days ago you told me that only small surgery is needed?"; Dr. Kotler answered "I haven't seen the x-rays at that time", and then Dr. Kotler said "Some people prefer to do nothing."

54. After filing the Complaints on April 11, 1995 and April 12, 1995, plaintiff saw Dr. Schabinger on about May 2, 1995, and obtained a report **(A214-218)** which allowed plaintiff to understand fraud and wrongs of the radioactive implant Ir-192 treatment, and that surgery was too extensive **(A214 at A218 and at A216, A204-205)**.

55. In August 1994, after discovering discrepancy between x-rays of implant and photograph, plaintiff read one medical book, and after obtaining Dr. Schabinger's report, since May 1995 until about September 1996, plaintiff read about 50 medical books related to the treatment of the head and neck cancers and understood that his lower teeth were wrongfully removed **(A599 to A600b)**, that defendant physicians committed multiple fraud radioactive implant Ir-192, that defendant physicians saw radiation failure in the form of ulceration since October 21, 1993, one week after implant treatment **(A179-182, A188)**, that biopsy and surgery was fraudulently delayed for 6 months **(A608 at A609)**, that plaintiff was not given prior and after surgery hyperbaric oxygen therapy **(A642o at A642p)**.

56. On about September 30, 1996, plaintiff obtained affidavit of Dr. Ward **(A374)** and about November 5, 1996 affidavit of Dr. Laursen **(A349)** with a help of a Texan lawyer.

57. Affidavit of Dr. Laursen **(A349)** allowed plaintiff understand that defendants Dr. Briele, Dr. Galinsky, Dr. Brunngraber, Dr. Wenig, Dr. Kotler and University of Illinois Hospital fraudulently subjected plaintiff to combined radiation therapy and surgery combined as official treatment modality of his cancer without plaintiff's knowledge and consent, and on about January 19, 1997, plaintiff for the first time was able to decipher record of August 18, 1992

(A160): "Plan continues with primary treatment with radiation".

58. After obtaining affidavits of Dr. Ward and Dr. Laursen, plaintiff saw attorney Herzl Levine **(A75)**, who had exactly the same problem as plaintiff, and was treated by the defendant Dr. Wenig. His all side effects were a small denture of a few lower incisor teeth.

59. As a direct and proximate result of hereinabove described conduct plaintiff suffered and/or suffers:

(a) radical wide marginal mandibulectomy from molar to molar, a skin graft, a tracheostomy, and wide surgical resection of the floor of mouth and tongue after radiation therapy, as evidenced by Exhibit **(A202-203)**;

(b) facial disfigurement **(A207)**, including loss of about 1/2 inch of the height of his lower jaw and about 40% of the muscle amount of his anterior chin and lower lip until present, and that this process is progressing increasing dysfunctionality of plaintiff's mouth and increasing disfigurement of plaintiff's face;

(c) great anguish in mind and uncontrollable pain **(A208)**, which continued as uncontrollable pain until beginning of September 1993, then continued as very high level of pain until about June 1994, described by physicians as *"debilitating and painful"* Exhibit **(A610 at A611)**, *"suffering one of the most agonizing imaginable"* Exhibit **(A238 at A239)**, and suffering of chronic pain at present and in the future;

(d) numbness of lower lip, restricted movement of the tongue and speech impairment;

(e) loss of all lower and loss of all upper teeth, dryness in mouth;

(f) being permanently impaired;

(g) being required to undergo medical treatment in the administration of drugs, periodic hospitalizations and surgeries, which plaintiff underwent since about March 17, 1997 in the form of 40 sessions of hyperbaric oxygen treatment, "gingevectomy plasty quad" to make room for upper dentures, bone graft surgery from his hip to mandible on August 25, 1997 **(A242)**, which unfortunately was lost, and surgery to lower jaw on June 1, 1998;

(k) since mid of June 2000, plaintiff developed delayed "osteoradionecrosis" of mandible and floor of mouth **(A247-b-c)**. And due to such complications, plaintiff will need to undergo surgery of "free flap reconstruction" instead of bone graft surgery to stop progressing devastation to his jaw, and regain acceptable cosmetically and functional jaw; and further

(l) being permanently impaired from pursuing his usual and ordinary activities and being impaired and deprived in the future from the ability to perform such usual and ordinary activities;

all to plaintiff's detriment, instead of:

(1) treating plaintiff with very limited surgery, as established by affidavit of Dr. Laursen **(A349 at A350 and A715j at A715k)**, resulting in plaintiff's sickness lasting maximum 2 to 3 months, and eventually losing at most a few lower incisor teeth (paragraph 58). It is a common knowledge that injury without radiation, e.g. broken leg causes disability lasting weeks only; or

(2) treating plaintiff with external radiation only, as established by affidavits of Dr. Ward **(A374**

at A376-77 and A715d at A715g), without removal of any plaintiff's teeth resulting in plaintiff's sickness about 4 months only. This assertion is based upon fact that after treatment by radioactive implant ended on October 16, 1992, pain came down in 2 months to the point that plaintiff began to work at the end of December 1992, and also Dr. Galinsky in his report to Social Security provided that plaintiff was sick until January 1, 1993 **(A186-187)**, this is 2-1/2 months after completion of radioactive treatment.

60. Aforesaid facts, together with affidavits of Dr. Ward **(A374 and A715d)** and Dr. Laursen **(A349 and A715j),** established that plaintiff was subjected to radiation therapy as primary treatment to be followed by surgery without his knowledge and consent, and established that treating him defendants Dr. Briele, Dr. Galinsky, Dr. Brunngraber, Dr. Wenig, Dr. Kotler and the University of Illinois at Chicago Hospital and Clinics subjected plaintiff to excessive force and battery. Van Leeuwan v. Nuzzi (1993), 810 F.Supp. 1120.

61. That plaintiff's medical mistreatment herein before described constitutes "Heinous battery", pursuant to Illinois Criminal Code 720 ILCS 5/12-4.1, which in pertinent parts provides:

"Heinous battery". (a) A person who, in committing a battery, knowingly causes severe permanent disability or disfigurement by means of a caustic substance commits heinous battery". (b) Sentence. Heinous battery is a Class X felony. (punishable by imprisonment not less than 6 years and not more than 30 years (730 ILCS 5/5-8-1)),

[Note: the *"caustic substance"* was *"fraudulent irradiation of plaintiff's jaw, through intentional improper design and insertion of the implant in*

plaintiff's jaw, meant to fail and meant to be primary treatment **(A160)** *as precursor to additional surgery delayed fraudulently for 6 months* **(A608 at A609)**", without plaintiff's knowledge and consent **(A164-187, A189, A400, A350, A715d at A715f, A715j at A715k)**, meant to inflict on plaintiff permanent facial disfigurement, cause loss of all teeth, cause permanent dysfunctionality of plaintiff's mouth and permanently handicap plaintiff, and inflict on plaintiff severe suffering of pain and disability **(A207, A206, A247a)**. Examples of "caustic substance" are: "grain alcohol" when ignited People v. Rogers, App.1 Dist.1991, 165 Il.Dec. 218, 222 Ill. App.3d 744, 584 N.E.2d 397; "boiling water" People v. Hicks, 1984, 78 Ill.Dec. 354, 101 Ill.2d 366, 462 N.E.2d 473]

B. Facts of denying plaintiff access to courts

63. On April 9, 1993, after Dr. Kotler told plaintiff that anterior part of mandible has to be replaced with fibula from his leg, plaintiff saw, through referrals, a lawyer specializing in medical malpractice to investigate his case and to find out if he could get through him another medical opinion to save his leg and jaw, but the lawyer was of no help **(A33)**.

65. Plaintiff contacted prior to filing and after filing of the Complaints altogether over 100 attorneys and about 200 physicians and or medical centers across the State of Illinois and the Continental United States, including Alaska, to no avail.

74. Prior to and after filing of the Complaint, some of the lawyers, plaintiff talked to, reviewed his

medical record with physicians, however, even those lawyers **(A44, A72, A80)** were not able to obtain report as to any negligence in plaintiff's treatment and even provided such information to Circuit Court, Judge Hogan presiding **(A262-263)**. Attorney Philip Maher **(A72)** told plaintiff on about June 16, 1995 "It can make you crazy".

75. Plaintiff traveled about 5,000 miles to see physicians to review his medical record for legal purposes. Plaintiff traveled about 10 times to Milwaukee, Wisconsin, once to Madison, Wisconsin, once to Cleveland, Ohio, once to Peoria, Illinois, once to New York City, New York, once to Dallas, Texas, once to Houston, Texas, once to Corpus Christi, Texas among numerous other places within State of Illinois, and once to Gary, Indiana;

76. Since about August 10, 1994, after discovering discrepancy between x-rays of implant and photograph of plaintiff's face with the implant, plaintiff contacted all Chicagoland Bar Associations, Government **(A94-108)** seeking review of his medical record, to obtain legal counsel or information as to administrative procedures in courts, and demanding due process to no avail. The legal assistance offices provided by the Government asked plaintiff first what type of case, and to plaintiff's response "medical malpractice" provided only one information "you need an attorney".

78. On September 23, 1996, lawyer recommended by Dr. Schabinger refused to take plaintiff cause **(A222b-c)**, after defendant Eileen Lysaught disclosed that she was tempering with plaintiff's hostile witnesses **(A314a-b)**, and plaintiff's cause was on the way to be dismissed based upon motion for summary judgment supported by perjurious

affidavits of defendants Dr. Galinsky and Dr. Wenig **(A316-325; A309 at A315; and A276 at A276a)**.

C. Facts of conspiracy, excessive force and battery, and depriving plaintiff Civil Rights in denying access to courts and in dismissing plaintiff's cause of action

81. On April 11, 1995, plaintiff filed timely Complaint *pro se* without required physician's affidavit pursuant to Section 2-622 of the Illinois Code of Civil Procedure against treating him physicians Dr. Briele, Dr. Galinsky, Dr. Brunngraber, Dr. Wenig and Dr. Kotler **(A248)**, and on April 12, 1995 against the University of Illinois Hospital and Clinics at Chicago **(A704-705)**.

91. On June 19, 1996, plaintiff took evidence deposition of defendant radiation therapist Dr. Galinsky. During deposition Dr. Galinsky denied relevancy of discrepancy between x-rays of implant Ir-192 inserted in plaintiff's jaw and photograph of the implant, and denied falsification of x-rays of the implant **(A280 at A287-289)**, admitted that radiation therapy failed in the area of lower radiation level, however, denied that delivered level of radiation to plaintiff's tumor bellow curable level **(A280-297 at A293)** and denied any negligence by himself and Dr. Brunngraber **(A280 at A297)**.

The relevancy of discrepancy between x-rays of implant Ir-192 and photograph in relation to radiation failure is explained at **(A568 through A583e at A583c)**

92. On July 18, 1996 Circuit Court, Judge Bronstein presiding denied plaintiff deposition of hostile expert witness Dr. Schabinger **(A300)** and continued on August 20, 1996 **(A307)** and August

22, 1996 based upon argument of "harassment of the physician" **(A302-305 at A304; A309-315 at A314)**.

Hearing on August 20, 1996 **(A302-305c)**

MR. ROSS: I talked with those doctors and they are not -- They were not willing to make any other statement. And this is why I came for subpoena. Rule 204 states that doctors can testify on their own. What this rule says, I have it here... **(A303-304)**

[Note: The Supreme Court Rule 204(c) amended June 1, 1995 and effective January 1, 1996, and applicable to my case on August 22, 1996, states:

Depositions of Physicians. The discovery depositions of nonparty physicians being deposed in their professional capacity may be taken only with the agreement of the parties and the subsequent consent of the deponent or under subpoena issued upon order of court...

Committee Comments to S.C. Rule 204(c) effective January 1,1996: Rule 204(c) implies that the trial court will exercise discretion in ordering the issuance of a subpoena upon a physician or surgeon and will refuse to do so unless there is some preliminary showing of good cause, regardless of whether there has been an objection by opposing counsel. At a minimum the moving party must be able to show that he has received the medical records available in the case and nevertheless has good reason to believe that a deposition is

necessary. If appropriate, the court may require that such a showing of good cause be accomplished by an affidavit accompanying the motion. **(A527)**]

...

THE COURT: It sounds to the Court like purposes of harassment.
MR. ROSS: What kind of harassment is this? Dr. Schabinger charged me eleven hundred dollars --
THE COURT: This isn't an opportunity to depose him with respect to a prior fee that he might have charged you.
MR. ROSS: Well, fee is the least important matter. The most important matter is his opinion regarding my treatment. And isn't my right to have a doctor to testify?
THE COURT: Yeah, find a doctor to testify.
MR. ROSS: Well, find a doctor. If he's not willing so what is for the subpoena?
MR. ROSS: ...So that's the way it goes.
THE COURT: ...The motion is denied. I am not going to grant your motion.
MR. ROSS: May I ask for what reason?
THE COURT: I can think of, and you have presented no reason, to take their deposition or for me to issue a subpoena. And I am not going to. Deny the motion. **(A304-305)**

Hearing on August 22, 1996 **(A309-315)**:

MR. ROSS: Most of doctors didn't want to talk to me, so I filed unconstitutionality of it [of section 2-662 of the Code of Civil Procedure]
THE COURT: You have lost that position already once, and I think on a constitutional issue you're likely not to go anywhere again. **(A312)**

...

THE COURT: Just because you don't like the opinion doesn't mean you can call them in, subpoena them and harangue them and harass them to get the point of view or an opinion that you desire. **(A314)**

...

MR. ROSS: This is destruction of life. **(A314)**

93. On August 20, 1996, Circuit Court, Judge Bronstein presiding, after denying plaintiff subpoena of a hostile expert witness Dr. Schabinger for the 2nd time, based upon argument of harassment of the physician as aforesaid in paragraph 92, deprived plaintiff to medical and other records together with Eileen Lysaught, Barry Bollinger and University of Illinois Hospital through excessive force and battery **(A302 at A305-305c):**

Hearing on June 11, 1996 **(A276-279c)**

MS. LYSAUGHT: ...motion to quash two subpoenas that were served upon Administrator of Illinois University Hospital... every time they get subpoenas, they say why aren't you handling this as the attorney for the University...

MR. ROSS: ...hospital is not the party here. I do not have to contact hospital as a party through the lawyer. **(A276b-c)**

MS. LYSAUGHT: I just don't want him in the General Counsel's office at the University of Illinois...

THE COURT: ...he is entitled to serve his subpoenas... **(A279b)**

[continued at **(A276c)**]

MR. ROSS: ...for three years I was denied to many medical records... Judge, the reason for quashing is to deny me to medical records. On September 22nd, counsel offered herself... she would prepare slides of pathological records...
MS. LYSAUGHT: ...this is not before the court.
MR. ROSS: ...it was entered in Court's order that counsel would have 14 days to provide a copy
THE COURT: Do you have a motion pending for today on this issue?
MR. ROSS: ...This is answer to this quashing... Eight months and 14 days have passed and counsel didn't give me those in spite of her own offer and Court's order. **(A276c-d)**

...

MS. LYSAUGHT: These subpoenas are due tomorrow...

...

THE COURT: Are you going to comply with those subpoenas?
MS. LYSAUGHT: Well, I was moving to quashing them so he could serve them on me.
THE COURT: You have got them. **(A276e)**
MS. LYSAUGHT: ...I don't want the hospital to think they have to answer those in three days...
MR. ROSS: I follow rules... It says 14 days.
MS. LYSAUGHT: I just want the 28 days...
THE COURT: 28 days ought to be fine.
MS. LYSAUGHT: Or be able to object. **(A279a)**
THE COURT: ...he is entitled to serve his subpoenas... **(A279b)**
MR. ROSS: ...hospital is not mentioned in any of those papers.
THE COURT: You won that one. **(A279b)**

Hearing on August 20, 1996 **(A302-305d).**

After denying plaintiff subpoena hostile expert witness Dr. Schabinger based upon argument of harassment of the physician **(A303-305)**

MS. LYSAUGHT: ...Mr. Ross has again been down to the University of Illinois to obtain his medical records... since my clients at the University of Illinois are afraid for their safety and being harassed... He has full set of records...

MS. LYSAUGHT: His entire set of records was at my office... **(A305-305a)**

MR. BOLLINGER: So that we're clear on the record... I've instructed them that if Mr. Ross shows back up on the property they are to issue him off of the property. And I want to make clear to this court that we are not going to allow him back on the premises of the University... If he goes over there again he's going to be thrown off the premises. **(A305a-c)**

THE COURT: ...Mr. Ross. You have right to your medical records, which as I understand it now an affidavit is going to be presented of complete and full compliance, that all those records have been produced. Is that correct?

MS. LYSAUGHT: Correct.

MR. BOLLINGER: That's correct....

MR. ROSS: This is the same way as they produced defendants for depositions, they presented only one. **(A305c)**

...

THE COURT: If you have a quarrel with the failure of the defendants to comply with a court order, to comply with discovery file a motion. I will hear it and decide it... **(A305c)**

94. Plaintiff was denied change of venue twice on July 17, 1996 and August 22, 1996 by Circuit Court of Cook County, Judge Donald O'Brien presiding, in spite of Circuit Court, Judge Bronstein's open railroading plaintiff's case toward dismissal **(A299, A308)**

96. On August 8, 1996 and August 16, 1996 plaintiff filed twice Notice of Unconstitutionality of Section 2-622 of the Illinois Code of Civil Procedure **(A108)**.

97. On August 22, 1996, Judge Bronstein changed his position and was willing to allow plaintiff deposition of expert witness Dr. Schabinger. However, defendants' attorney disclosed that she was tempering with plaintiff's consulting physicians/hostile experts witnesses:

> "THE COURT: -- to allow you to issue a subpoena with respect to Dr. Schabinger (phonetic) or the other two individuals, the other two doctors, just because you don't like what they said and you asked them to review your medical records.
> What you ought do is find an expert who is willing to testify or produce an affidavit that there has been negligence here. That's what you want.
> What is the subpoena again? And I want that -- because we're getting circular and I'm not going to get that circular.
> THE COURT: ...I am going to allow -- are you going to hire this individual?
> MR. ROSS: I will call them immediately.
> MS. LYSAUGHT: I've spoken to them. They haven't reviewed anything. Exhibit **(A309 at A314a-b)**; and

on about September 23, 1996, attorney Mark Schwartz, Dr. Schabinger referred plaintiff to himself on July 1, 1996 **(A222b)** refused to take plaintiff's case after about 8 weeks of consideration **(A222c)**.

98. On September 6, 1996, defendants filed Motion for Summary Judgment supported by sworn to affidavits of Dr. Galinsky and Dr. Wenig **(A316-325)** denying any negligence as to all defendants **(A322 and A325)**. Defendants withdrew these affidavits together with the Motion for Summary Judgment on November 25, 1996 **(A326)** after plaintiff filed affidavits of Dr. Ward **(A374)** and Dr. Laursen **(A349)** on October 11, 1996 and November 15, 1996.

99. On January 4, 1997, plaintiff signed contract with attorney Margaret M. O'Leary to prosecute his all claims **(A352)**.

101. On March 4, 1997, attorney Margaret O'Leary had plaintiff signed Amended Complaint **(A354)**... attorney Margaret O'Leary fraudulently... changed date of last treatment by Dr. Galinsky from June 2, 1993 to "On and before April 15, 1993"... did not allege that plaintiff was subjected to radiation therapy as primary treatment without his knowledge and consent... **(A354-381 and A248-257)**.

113. The Appellate Court denied plaintiff fraudulent concealment and suppressed the evidence of conspiracy to dismiss plaintiff's cause...

116. The Supreme Court of Illinois suppressed conspiracy and abuse of the power of the office to dismiss plaintiff's claim and did not allow plaintiff even to appeal **(A643)**.

120. On September 15, 2000... Plaintiff's Complaint against University of Illinois at Chicago Hospital and Clinics was converted as against Board of Trustees of the University of Illinois **(A704-717 at**

A716-717), in violation of the Rules and Statutes of the Illinois Court of Claims, Section 790.20 and Illinois Code of Civil Procedure, Section 2-104, and against plaintiff's multiple times raised such legal arguments... and the statute 735 ILCS 5/2-104 imposes the duty on defendant to move to transfer a cause of action to proper venue...

(c) After signing Contract with plaintiff's on January 4, 1997, attorney Margaret O'Leary had plaintiff withdrew Motion for Transfer of the cause against Hospital to the Cook County Circuit Court, and the Court of Claims entered order on January 17, 1997 "This cause remain pending against the UNIVERSITY OF ILLINOIS AT CHICAGO HOSPITAL AND CLINICS under name BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS" **(A708)**

COUNT I

(Section 1983 Excessive Force and Battery)

1 - 120. Plaintiff incorporates paragraphs 1 through 120 of the Complaint, as and for paragraphs 1 through 120 of Count I as though fully set forth herein.

121. The defendants are Dr. Henry Briele, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr. Barry Wenig, Dr. Howard Kotler, and University of Illinois at Chicago Hospital and Clinics.

123. Between July 10, 1992 and June 2, 1993, defendants subjected plaintiff Bart A. Ross willfully, intentionally and maliciously to one or more of negligent acts which fell bellow acceptable standard of medical care in the United States and constitute excessive use of force and battery meant to injure,

impose tremendous suffering and destroy quality of life of the plaintiff, as follows:

(c) improperly, through fraudulent concealment, without plaintiff's knowledge and consent, subjected plaintiff to combined radiation treatment as primary treatment to be followed by surgery **(A160-189, A400; A349 at A350, A715j at A715k)**;

127. By the conduct and acts or omissions of excessive force and battery alleged herein, the defendants... imposed upon him involuntary servitude as a permanent patient to doctors (plaintiff would have died if he did not subject himself to surgery of April 15, 1993, additional to radiation therapy), to his right not to be deprived of life or property (to be free from pain, suffering, facial disfigurement and dysfunctionality of his mouth) without due process of law or of the law, as secured by Fourteenth and Thirteenth Amendments to the United States Constitution.

128. Such acts or omissions, as alleged and set forth herein, were committed by the defendants willfully, intentionally and maliciously, without any medical justification, and for the purpose of depriving plaintiff of his constitutional rights under the law.

COUNT III

(Section 1985(3) Conspiracy)

1 - 135. Plaintiff incorporates paragraphs 1 through 135 of the Complaint, by reference as and for paragraphs 1 through 135 of Count III as though fully set forth herein.

136. The defendants are Dr. Henry Briele, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr.

Barry Wenig, Dr. Howard Kotler and the University of Illinois at Chicago Hospital and Clinics.

138. Between July 10, 1992 and June 2, 1993, defendants during their care and attendance to the plaintiff for squamous cell carcinoma of the floor of the mouth, defendants physicians and the hospital willfully, intentionally and maliciously conspired, planned and agreed to assault plaintiff through excessive force and battery, and subject plaintiff through fraudulent concealment, without his knowledge and consent, to treatment with radiation therapy as primary treatment to be followed by surgery and prevent plaintiff's discovery of such mistreatment...

139. By the conduct and acts or omissions of excessive force and battery alleged herein, the defendants deprived the plaintiff... not to be enslaved and/or to be imposed upon him involuntary servitude as a patient to doctors (plaintiff would have died if he did not undergo surgery of April 15, 1993... without due process of law or of the law, as secured by Fourteenth and Thirteenth Amendments to the United States Constitution, and caused injury as hereinabove alleged in paragraphs 59, 129.

140. Such acts or omissions, as alleged and set forth herein, were committed by the defendants willfully, intentionally and maliciously, without medical justification and against the law, and for the purpose of depriving plaintiff of his constitutional rights under the law.

COUNT IV

(Section 1983 Conspiracy Claim)

1 - 140. Plaintiff incorporates paragraphs 1 through 140 of the Complaint, by reference as and

for paragraphs 1 through 140 of Count IV as though fully set forth herein.

141. The defendants are Dr. Henry Briele, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr. Barry Wenig, Dr. Howard Kotler and University of Illinois at Chicago Hospital and Clinics.

142. That the defendants and each of them did conspire among themselves to deprive plaintiff of his constitutional rights to be treated according to the standard of medical care in the United States, by engaging in cover up of the use of excessive force and battery in plaintiff's treatment and prevent plaintiff from discovery of the use of such excessive force battery used upon plaintiff as hereinafter alleged.

143. That an explicit or implicit "meeting of minds" occurred among the defendants on July 10, 1992 and continuing thereafter in which an agreement was reached wherein the defendants did engage in one or more of the following overt acts or omissions to effectuate and promote the conspiracy:

(a) agreed between themselves to subject plaintiff to radiation therapy and surgery combined without plaintiff's knowledge and consent;

144. That defendants committed these overt acts or omissions as heretofore described with the joint objective of injuring the plaintiff as hereinabove alleged in paragraphs 59 and 129, concealing the use of excessive force and battery against plaintiff, preventing plaintiff's discovery of the true circumstances of his injuries and use of excessive force in the treatment of his cancer, and depriving the plaintiff of enjoying and exercising his rights, privileges and immunities as a citizen of the United States and the State of Illinois, including, but not limiting to his right to be treated for his medical conditions

according to acceptable standard of care in the United States with his knowledge and consent, to his right not to be enslaved and/or to be imposed upon him involuntary servitude as a patient to doctors (plaintiff would have died if he did not undergo surgery of April 15, 1993), to his right not to be deprived of life or property (to be free from disability, pain and suffering, facial disfigurement and dysfunctionality of his mouth) without due process of law or of the law, as secured by Fourteenth Amendment and Thirteenth Amendment to the United States Constitution, and caused injury as hereinabove alleged in paragraphs 59, 129

145. That the explicit or implicit agreements of the defendants to cover up the use of excessive force as heretofore described were first made on July 10, 1992 and have continued and reoccurred until about November 25, 1996, when they withdrew their affidavits supporting motion for summary judgment.

COUNT V

(Section 1983 Denying Access To Courts)

1 - 145. Plaintiff incorporates paragraphs 1 through 145 of the Complaint by reference as and for paragraphs 1 through 145, of Count V as though fully set forth herein.

146. The defendant is the State of Illinois.

147. That to recover for wrongs and injuries to his parson on account of medical malpractice inflicted upon plaintiff by defendants Dr. Briele, Dr. Galinsky, Dr. Wenig, Dr. Kotler, and University of Illinois at Chicago Hospital and Clinics, plaintiff, Bart A. Ross, was required to file affidavit/report of a physician, pursuant to Illinois Code of Civil

Procedure, Section 5/2-622 "Healing art malpractice", stating:

(a) that there is a reasonable and meritorious cause for filing of such action;

(b) that there was negligence involved in treatment of the plaintiff;

(c) that reasonable physician would have informed plaintiff/patient of the consequences of the procedure performed upon plaintiff;

(d) clearly identifying plaintiff BART A. ROSS and the reasons for reviewing health professional determination that a reasonable and meritorious cause for the filing of the action exists.

148. That since about April 9, 1993 **(A33)** until the end of September 1996, plaintiff took all possible steps to have his medical reviewed for legal purposes:

149. Plaintiff contacted over 100 attorneys.

150. Plaintiff contacted over the phone about 200 physicians and/or healthcare providers in Illinois and continental United States, including Alaska to no avail. Most of physicians refused even to talk to plaintiff after his disclosure that he seeks review of his medical record for legal purposes.

151. Plaintiff traveled about 5,000 miles to see physicians to review his medical record for legal purposes. Plaintiff traveled about 10 times to Milwaukee, Wisconsin, once to Madison, Wisconsin, once to Cleveland, Ohio, once to Peoria, Illinois, once to New York City, New York, once to Houston, Texas, once to Dallas, Texas, among numerous other places within State of Illinois, and once to Gary, Indiana, all to no avail. The only results were: (1) Dr. Schabinger's report on about May 2, 1995 not meeting requirements of the Section 2-622 of the Code

(A214). This report, however, allowed plaintiff to understand the wrongs and fraud with radioactive implant Ir-192 and some other mistreatments, and (2) Dr. Bruckman's report of August 2, 1995 **(A373)** ruled on November 21, 1995 not sufficient under the requirements of section 2-622 of the Illinois Code of Civil Procedure **(A260)**.

152. After filing Complaint on April 11, 1995 without required report section 2-622 of the Code, lawyers did not want to take plaintiff's case based upon these reports of Dr. Schabinger **(A214)** and later of Dr. Bruckman **(A373)**, in spite of plaintiff's explanation of the wrongs with the implant. When plaintiff learned that he can subpoena Dr. Schabinger, pursuant to Supreme Court Rule 204(c), Circuit Court, Judge Bronstein presiding denied plaintiff subpoena of Dr. Schabinger on July 18, 1996, and on August 20, 1996, then continuing on August 22, 1996 based upon argument that "it would be harassment of the physician" **(A304, A314)**.

153. That since about August 10, 1994, plaintiff contacted entire Government, and demanded due process of law, review of his medical record, providing expert witness, providing an attorney or even just information of procedural requirements in courts' proceedings, all to no avail, *e.g.* **(A94, A5, A20)** and **(A97-126a)**.

155. Plaintiff obtained affidavits of Dr. Ward **(A374)** and Dr. Laursen **(A349)** only as the result of a bit of luck...

156. If plaintiff did not obtain affidavits of Dr. Ward **(A374)** and Dr. Laursen **(A349)**, plaintiff's cause would be dismissed on motion for summary judgment field on September 6, 1996 **(A316)** supported by perjurious affidavits of defendants Dr. Galinsky **(A318)** and Dr. Wenig **(A323)** in spite of

plaintiff's full understanding of mistreatment between July 10, 1992 and June 2, 1993, excluding only that his tumor could be treated by surgery alone in July 1992, and that hyperbaric oxygen therapy relieves uncontrollable pain **(A208 and A349 at A350; A715j at A715k)**, and after all plaintiff's efforts described hereinabove. These perjurious affidavits defendants withdrew on November 25, 1996 together with motion for summary judgment after plaintiff's filing affidavits of Dr. Ward and Dr. Laursen **(A326)**.

157. Plaintiff claims that Statute 735 ILCS 5/2-622 "Healing art malpractice" of the Illinois Code of Civil Procedure requiring a report/affidavit from a physician and an attorney's affidavit is unconstitutional in that it violates the Fourteenth Amendment of the Constitution of the United State of America, in that it:

(a) denies plaintiff due process of law and of the law;

(b) in effect it denies an injured or wronged party an opportunity to freely, completely and promptly obtain justice by law;

(c) effectively denies a plaintiff a right to trial by jury;

(d) allocates to the medical profession the judicial power vested in courts...

158. Out of over 100 attorneys plaintiff contacted prior to and after filing Complaint at Law, three of the attorneys had plaintiff's medical record reviewed by health care professionals denying any negligence **(A44, A72, A80)**, and such information lawyers provided to the Circuit Court, Judge Hogan presiding **(A261 at A262-263)** at the time when plaintiff understood all wrongs with the radiation therapy by

implant Ir-192 and provided extensive documentation in support thereof.

159. Statute 735 ILCS 5/2-622 "Healing art malpractice" requiring a report/affidavit from a physician denies an injured plaintiff to courts, denies any recovery for injuries, and provides environment to health care professionals and health care providers within the State of Illinois of total impunity for willful, intentional and malicious gross medical mistreatments of patients in violation of established for decades proper medical procedures classified as "Heinous battery" pursuant to Illinois Criminal Code 720 ILCS 5/12-4.1, as evidenced, by medical literature **(A584-642p)** and by affidavits of Dr. Ward, Exhibits **(A374 and A715d),** of Dr. Laursen **(A349 and A715j)**, and other relevant records of plaintiff's treatment.

164. The defendant State of Illinois denied plaintiff equal protection of law, and since April 1993 denied plaintiff any health professional expert witness from within the State of Illinois even through lawyers who reviewed plaintiff's medical record with health professionals **(A262-263)** and **(A44, A72, A80)**, and denied to plaintiff any health professional expert witness from within the State of Illinois when plaintiff understood wrongs of his mistreatment and raised his demands of due process to highly aggressive level **(A5, A20)**, and then defendant State of Illinois denied plaintiff application of existing law and stripped plaintiff from Dr. Bruckman's report section 2-622 of the Code established sufficient by Judge Hogan **(A265)**, and stripped plaintiff from expert witnesses Dr. Ward and Dr. Laursen and their affidavits and section 2-622 reports, plaintiff found himself in the State of Texas after 3-1/2 years, contacting about 200 physicians/medical centers

nationwide, contacting over 100 attorneys, and traveling about 5,000 miles, as set in above paragraph 63-80 and 147-155...

168. Such willful, intentional and malicious violations of plaintiff's civil rights guaranteed by Fourteenth Amendment to the United States Constitution of denying access to courts increased magnitude of plaintiff's involuntary servitude to doctors as a patient, and violates plaintiff's right to the Thirteenth Amendment to the Constitution of the United States, to his right not to be enslaved and/or to be imposed upon him involuntary servitude as a patient to doctors, in addition to his right not to be deprived of life or property without due process of law or equal protection of the law, as secured by Fourteenth Amendment to the United States Constitution, and caused injury to the plaintiff of dismissal of his cause of action against defendants-physicians and terminating his cause of action against University of Illinois at Chicago Hospital and Clinic in as hereinabove alleged.

COUNT VI

(Section 1985(3) Conspiracy)

1 - 168. Plaintiff incorporates paragraphs 1 through 168 of the Complaint by reference as and for paragraphs 1 through 168 of Count VI as though fully set forth herein.

169. The defendants are the State of Illinois, attorneys Margaret O'Leary, Michael Krause, Eileen Lysaught, Barry Bollinger, Dr. Henry Briele, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr. Barry Wenig, Dr. Howard Kotler, and University of Illinois at Chicago Hospital and Clinics.

186. On July 3, 1997, Circuit Court, Judge Bronstein presiding, defendant Margaret O'Leary and

defendant Michael Krause made additional preparation and then discussed how to plead Second Amended Complaint to dismiss plaintiff's cause entirely with prejudice **(A428-429, A432-435)**:

(1) the words of paragraph four (4) of the ORDER of July 3, 1997 "so as to plead the discovery rule pursuant to 13-212" were crossed out **(A670, par.4)**;

(2) Amended Complaint had changed last date of treatment by Dr. Galinsky to "On and before April 15, 1993" **(A354 at A359)** from June 2, 1993 by defendant Margaret O'Leary **(A248-257 at 250)**; then

(3) during hearing on July 3, 1997:

> MS. O'LEARY: ...they filed these affidavits which by the way are not notarized, not sworn to and not notarized. **(A411)**...
> MS. O'LEARY: Additionally -- and we have moved to strike from the record conclusory allegations or statements in their affidavits which your Honor said he wanted to take with the case. **(A412)**

Defendant Dr. Galinsky's affidavit-writing attached to Reply Brief **(A440 at A444)** referred to not included Exhibit "2" of the affidavit, which is the Exhibit "F" supporting the Motion to Dismiss, of plaintiff's follow-up record with Galinsky on June 2, 1993 **(A385-401 at A386, A400-401).**

Plaintiff's attorney MARGARET O'LEARY struck defendants' Exhibit "F" of their Motion to Dismiss **(A442, A406-407)**, the record of plaintiff's follow-up with Dr. Galinsky on June 2, 1993 **(A400-401)**, and in this way the prove that Dr. Galinsky treated plaintiff on June 2, 1993 was broken (plaintiff was

treated/followed-up at the University of Illinois at Chicago Hospital and Clinics by other physicians until March 1995 **(A435a-b)**) The affidavit-writing was left as part of the Reply Brief **(A440-446 at A444)** stating that Dr. Galinsky last treated plaintiff on February 17, 1993 **(A414-416)**, and the prove that Galinsky treated plaintiff on June 2, 1993 attached to Motion to Dismiss as Exhibit "F" **(A400)** was removed from the record of Motion to Dismiss.

(4) then Circuit Court, Judge Bronstein presiding, defendants Margaret O'Leary and Michael Krause further made preparations and then discussed how to plead Second Amended Complaint to dismiss it with prejudice entirely as to Counts 1,3 and 5, after striking/dismissing Counts 2, 4, 6, 7 and 8 (above paragraph (n)) against all defendants Briele, Galinsky, Brunngraber, Wenig, and Kotler with prejudice as not relating back **(A434-435, A670-671)** on bases:

> MS. O'LEARY: ...with reference to Wenig and Kotler could he have leave to amend to plead the discovery rule as to those?
> THE COURT: As to relation back issue I don't understand what you mean by the discovery rule. I didn't even mention the discovery rule. **(A425)**
> MS. O'LEARY: I understand that... you're striking the counts against Wenig and Kotler because they do not relate back to the original filing.
> THE COURT: That's right.
> MS. O'LEARY: Mr. Ross did not discover until subsequent to the two year Statute of Limitations this issue that is stated in these two counts...

THE COURT: ...I just don't see the application -- at this point I'm simply going to dismiss those counts with respect to Wenig and Kotler. **(A425-426)**

THE COURT: With respect to Counts 1, 3 and 5 I think that's Brunngraber, Briele, and Galinsky I have affidavits indicating the treatment being completed on X dates. I've got an allegation in the complaint that's very vague as to dates [On and before April 15, 1993... **(A354, A359)**]. Moreover I have nothing in -- no allegations pleading the discovery rule in the complaint, and no counter affidavit to dispute what Galinsky, Briele and Brunngraber tell me in their affidavits [treatment by Briele November 18, 1992; by Brunngraber March 31, 1993; and by Galinsky February 17, 1993]. I'm going to grant the motion, but I'm going to grant you leave to amend the complaint with respect to I think that's again 1, 3 and 5 to state the discovery rule, or in some fashion -- really to plead the discovery rule. **(A428)**

MS. O'LEARY: Judge, you cannot have -- a cause of action does not accrue until there's injury. The injury was April 15th. **(A428)**

MS. O'LEARY: ...when he had this disfiguring surgery... **(A413)**; ...Their negligence occurred during the time periods they described in their affidavits, **(A416)** [Galinsky until February 17, 1993; Briele November 18, 1992; Brunngraber March 31, 1993 **(A443-446)**]; ...which your

Honor said he wanted to take with the case. **(A412)**

MR. KRAUSE: ...They blew the Statute of Limitations... Obviously we're going to want to reply... We just want an opportunity to respond to their amended complaint as to only those three doctors.

THE COURT: You will get a chance to. **(A430-431)**

[continued by MS. O'LEARY at **(A428)**]

There is no cause of action when you have no injury. People come and say, well, I got sloppy medical care, I got bad medical care. So what you're fine. There is no cause of action just because there was negligence. **(A428)**

THE COURT: Then maybe you need to flesh out the allegations of negligence so I understand that. I don't understand that from the complaint, and I'm giving you leave to amend. **(A429)**

Then, beginning at **(A432)**

MR. KRAUSE: Can you look at paragraph 4 on this. It's regarding the amendment at issue. I thought I tracked the language of what you told me.

MS. O'LEARY: You gave me leave to amend. I assert discovery rule is not applicable to this. You said flash out what you're talking about when you file the amended complaint.

THE COURT: Right.

MS. O'LEARY: You don't --

THE COURT: If I find the discovery rule is applicable, you don't plead it. I suppose you have got your appeal, right?

MS. O'LEARY: Right.
MR. KRAUSE: If they don't plead it then we would just come back here on the same motion.
THE COURT: That's right.
MR. KRAUSE: Is that what you want us to do?
THE COURT: Well, I suspect it's the discovery rule in some fashion or in some fashion this case is going to be pled so that I understand --
MR. KRAUSE: How do you want that to read?
THE COURT: I'm granting it with leave to replead.
MS. O'LEARY: Within twenty-eight days and the forth paragraph is eliminated.
MR. KRAUSE: Okay. That's fine. **(A432-433)**
THE COURT: I think there are no pending counts as to Wenig and Kotler. They were all informed consent.
MS. O'LEARY: That's correct... **(A434)**

187. As above conversation discloses Circuit Court, Judge Bronstein presiding together with defendant Margaret O'Leary and defendant Michael Krause, pursuant to and in furtherance of their conspiracy to dismiss plaintiff's claim discussed how to plead Second Amended Complaint to dismiss it with prejudice entirely.

(1) Defendant Margaret O'Leary, as evidenced by her worksheet of plaintiff's Second Amended Complaint **(A436-437)** would not plead in paragraphs four (4) and five (5) of the Counts of Second Amended Complaint specific injuries stated in the Amended Complaint **(A354-371),** which were already stripped down injuries from original Complaint **(A249, A259)**, and would not plead to what plaintiff consented, and instead she would plead some unclear injury and consequences of

injury, which would occur "On April 15, 1993 and thereafter". **(A437)**

> MS. O'LEARY: ...the injury occurred April 15th... when he had this disfiguring surgery... **(A413)**

(2) All defendants Briele's, Galinsky's, and Brunngraber's treatment would be ended not later than March 1993, as Galinsky's treatment was terminated from June 2, 1993 to February 17, 1993 based upon Galinsky's not sworn to and not notarized affidavit-writing **(A444, A415-416)**.

> MS. O'LEARY: ...Their negligence occurred during the time period they describe in their affidavits, however, there was no injury until he had that surgery on April 15... **(A415-416)**

Defendant Margaret O'Leary would not plead discovery rule. She would plead some unclear injury and consequences of injury, which would occur "On April 15, 1993 and thereafter " **(A437)**, this is more than two (2) years after defendants completed plaintiff's treatment and filing of the original Complaint.

(3) Defendants would come on the same motion to dismiss **(A385)** pursuant to section 2-619 and 13-212 of the Code, and plaintiff's Second Amended Complaint and entire cause would be dismissed with prejudice on bases that there is no cause of action because some unspecified and unclear injury occurred "On April 15, 1993 and thereafter ", and plaintiff's treatment by defendants Briele, Galinsky, and Brunngraber ended in March 1993, and plaintiff by not pleading discovery rule forfeit his right to justice and recovery for injuries:

MR. KRAUSE: ...They blew the Statute of Limitations... Obviously we're going to want to reply... We just want an opportunity to respond to their amended complaint as to only those three doctors.
THE COURT: You will get a chance to. **(A430-431)**
THE COURT: If I find the discovery rule is applicable, you don't plead it.
MR. KRAUSE: If they don't plead it then we would just come back here on the same motion.
THE COURT: That's right. **(A433)**

(4) As to defendant's MR. KRAUSE: Is that what you want us to do? **(A433),** "us" was established on about March 4, 1997, at the time of filing improperly drafted Amended Complaint notarized by associate attorney of plaintiff's attorney John Spatuzza **(A353, A372, A380, A403-404)**, and was asking Judge Bronstein if he wants defendant Margaret O'Leary not to plead discovery rule in the Second Amended Complaint so Judge Bronstein would dismiss it with prejudice.

(5) When plaintiff's counsel Margaret O'Leary took his case, it was decided that maybe only allegations of hyperbaric oxygen treatment would be eventually allowed to be prosecuted, and after appeal, and everything else was to be dismissed, as:

THE COURT: ...I suppose you have got your appeal, right?
MS. O'LEARY: Right **(A432-433)**

(6) Counts 1, 3 and 5 were to be dismissed in plaintiff's Second Amended Complaint with prejudice, and Judge Bronstein already dismissed

Counts of Informed Consent 2, 4, 6, 7, and 8 with prejudice as not relating back. However, although all counts had proper section 2-622 support, and so Counts 2, 4, and 6 were supported by Dr. Laursen's 2-622 report **(A379),** and Counts 7, and 8 were supported by Dr. Laursen's 2-622 report **(A381),** only Counts 7, and 8 had proper support of language section 2-622(d) of the Code incorporated in the attorney's affidavit, paragraph "5" **(A380)** supporting Amended Complaint that *"...reasonable physician would have informed plaintiff of the consequences of the various procedures performed upon plaintiff, and of various alternative treatment options."*, therefore it is reasonable to assume that Counts 2, 4, and 6 would be dismissed with prejudice on appeal due to improper attorney's affidavit supporting Counts 2, 4, and 6 lacking the language of the section 2-622(d) of the Code **(A372)**.

170. Between about June 11, 1996 until present defendant State of Illinois represented by one or more or all of the branches, parts and or offices and/or individuals of the Illinois Government comprised of the Governor, the General Assembly, the Supreme Court, the Appellate Court First District Second Division, the Circuit Court of Cook County, Judge Philip Bronstein presiding, the Circuit Court of Cook County, Judge Donald O'Brien presiding, the Court of Claims, Illinois State Attorney of Cook County, Department of Professional Regulation, State of Illinois Judicial Inquiry Board, Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, together with

defendants Margaret O'Leary, Eileen Lysaught, Michael Krause, Barry Bollinger, Dr. Henry Briele, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr. Barry Wenig, Dr. Howard Kotler,

and University of Illinois at Chicago Hospital and Clinics

willfully and maliciously conspired, planned and agreed to dismiss plaintiff's cause of action on account of medical malpractice committed by defendants Dr. Henry Briele, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr. Barry Wenig, Dr. Howard Kotler, and University of Illinois at Chicago Hospital and Clinics during care for and attendance to plaintiff, Bart A. Ross for squamous cell carcinoma of the floor of the mouth between July 10, 1992 and June 2, 1993, and

189.(4) The Appellate Court First District Second Division then denied plaintiff his right to object and appeal Circuit Court, Judge Bronstein presiding intentional, willful, malicious conducted in conspiracy with defendant Margaret O'Leary and defendant Michael Krause dismissal of overwhelming majority of plaintiff's cause, and dismissed plaintiff's entire cause of action entirely **(A668-669)**.

> On appeal Ross cites several cases for the proposition that the law permits him to challenge the court's dismissal of his complaint, although the court initially dismissed with leave to amend. E.g., Barnett v. Zion Park District, 171 Ill.2d 378, 384, 665 N.E.2d 808 (1996)...
>
> We are not persuaded that Ross understands the significance of standing on his complaint. **(A661)**
>
> By standing on his complaint, Ross waived the right to amend to plead facts showing the fraudulent concealment caused Ross to discover late his cause of action for negligent treatment... We deny both the motion to strike the appellate court's order and the petition for rehearing. **(A647 at A668-669)**;

The Appellate Court First District Second Division overruled not only plaintiff's cited cases of the Supreme Court decisions that plaintiff can challenge court's decision, which in plaintiff's case were open conspiracy and abuse of the power of the office to dismiss plaintiff's claim, e.g. Barnett v. Zion Park District, but also overruled defendants cited cases in decisions Gillgen v. City of Lake Forest, (1991) 221 Ill.App.3d 5, 581, N.E.2d 739 and Maggini v. OSF Healthcare System, (1994) 256 Ill.App.3d 551, 627 N.E.2d 126, and overruled also its own decision in Brown v. Kidd, (1st Dist. 1991) 217 Ill.App.3d 860 at 865, 578 N.E.2d 224. **(A720-735 at A733-734)**.

Appellate Court also totally disregarded plaintiff's argument in "Petition for Rehearing" that *conspiracy to procure a verdict in a court of justice is a high crime requiring resentment of law.* Gallagher et al. v. People (1904) 211 Ill. 158, 71 N.E. 842 at 845, and dismissed plaintiff's entire claim.

190. The Supreme Court of Illinois suppressed entirely conspiracy to dismiss plaintiff's claim in the Circuit Court, Judge Bronstein presiding action and by Appellate Court First Circuit Second Division, and on June 2, 1999 denied plaintiff even to appeal, dismissing in this way plaintiff's entire cause **(A643)**.

191. Illinois Department of Professional Regulation denied any wrong in plaintiff's medical treatment and denied to take any disciplinary action against defendants physicians **(A118-118a)**.

192. Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois denied to take any action against defendants Margaret O'Leary, Michael Krause, Eileen Lysaught and others on account of conspiracy in dismissal of plaintiff's cause, and violation of Criminal Code of the State of

Illinois and Rules of Professional Conduct **(A120, A126a)**.

193. On January 4, 1999, State of Illinois Judicial Inquiry Board denied to take any action against Judge Philip L. Bronstein on account of being major force in conspiracy to dismiss of plaintiff's cause **(A119)**.

195. On September 15, 2000, defendant State of Illinois represented by Court of Claims terminated, without dismissing or otherwise ruling as to Respondent/Defendant the University of Illinois at Chicago Hospital and Clinics. Plaintiff's Complaint against University of Illinois at Chicago Hospital and Clinics was converted as against Board of Trustees of the University of Illinois **(A704-717 at A716-717)**, in violation of the Rules and Statutes of the Illinois Court of Claims, Section 790.20 and Illinois Code of Civil Procedure, Section 2-104, and against plaintiff's multiple times raised such legal arguments.

196. By the conspiracy and acts of excessive force and battery of the defendants against plaintiff pursuant thereto, and abuse of the power and authority of the office, defendants have willfully, intentionally and maliciously, directly and indirectly, increased the magnitude of plaintiff's involuntary servitude to doctors as a patient to stop progressing devastation to his jaw and mouth (plaintiff already underwent 3 surgeries to his mouth in 1997-98, and now due to not successful bone graft surgery on August 25, 1997 **(A242)** and developed delayed osteoradionecrosis in June 2000 **(A247b-c)** plaintiff will need free flap reconstruction), and prevented the plaintiff from enjoying and exercising his rights, privileges and immunities as a citizen of the United States and the State of Illinois, including, but not limiting to his right to be treated for his medical

conditions according to acceptable standard of care in the United States with his knowledge and consent, to his right not to be enslaved and/or to be imposed upon him involuntary servitude as a permanent patient to doctors, to his right not to be deprived of life or property (to be free from disability, pain and suffering, facial disfigurement and dysfunctionality of his mouth as hereinabove alleged) without due process of law or of the law, as secured by Fourteenth Amendment and Thirteenth Amendment to the United States Constitution, and caused injury to the plaintiff of dismissal of his cause of action against defendants-physicians and terminating his cause of action against University of Illinois at Chicago Hospital and Clinic in as hereinabove alleged.

COUNT VII

(Section 1983 Conspiracy Claim)

1 - 196. Plaintiff incorporates paragraphs 1 through 196 of the Complaint by reference as and for paragraphs 1 through 196 Count VII as though fully set forth herein.

197. That the defendants

State of Illinois represented by one or more or all of the branches, parts and or offices and/or individuals of the Illinois Government comprised of the Governor, the General Assembly, the Supreme Court, the Appellate Court First District Second Division, the Circuit Court of Cook County, Judge Philip Bronstein presiding, the Circuit Court of Cook County, Judge Donald O'Brien presiding, the Court of Claims, State Attorney of Cook County, Illinois Department of Professional Regulation, State of Illinois Judicial Inquiry Board, Attorney Registration

and Disciplinary Commission of the Supreme Court of Illinois, together with

defendants Margaret O'Leary, Michael Krause, Eileen Lysaught, Barry Bollinger, Dr. Henry Briele, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr. Barry Wenig, Dr. Howard Kotler, and University of Illinois at Chicago Hospital and Clinics

and each of them did conspire between themselves with one or more of the defendants to deprive the plaintiff of his constitutional rights and dismiss his cause of medical malpractice committed by defendants Henry Briele, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr. Barry Wenig, Dr. Howard Kotler, and University of Illinois at Chicago Hospital and Clinics during care for and attendance to plaintiff, Bart A. Ross for squamous cell carcinoma of the floor of the mouth between July 10, 1992 and June 2, 1993.

198. That an explicit or implicit "meeting of minds" occurred among the defendants on about July 10, 1992 and continuing thereafter in which an agreement was reached wherein the defendants did engage in one or more of the following overt acts to effectuate and promote the conspiracy:

(a) agreed between themselves to deny the plaintiff equal protection of the law;

(b) agreed between themselves to violate existing law and deny plaintiff application of the existing law;

(g) agreed between themselves to prepare plaintiff's Amended Complaint improperly and... not plead subjecting plaintiff to radiation therapy as primary treatment without his knowledge and consent... and have sign such improperly prepared complaint by plaintiff to put blame on

plaintiff for such preparation of the Amended Complaint;

199. That defendants committed these overt acts as heretofore described with the joint objective of concealing of plaintiff's injuries, of the true circumstances and reasons for plaintiff's injuries, of concealing of conspiracy and abuse of the power of the office in dismissal of plaintiff's claim, and hindering the due course of justice by engaging in a cover up of the defendants' true involvement in the use of excessive force and abuse of the authority and power of the office, to deprive the plaintiff of his constitutional rights under the Fourteenth Amendment.

202. That by violating plaintiff's civil rights, as described hereinabove, defendant the State of Illinois and all remaining defendants, denied plaintiff ability to salvage his life for more than 7 years since surgery of April 15, 1993 and inflicted additional non-reversible, equal to initial mistreatment in 1992-93, damages to plaintiff's jaw, mouth and every aspect of plaintiff's life, making it more difficult to correct it, and further increasing plaintiff's inability to perform those usual things/activities, which every person takes for granted, and which are guaranteed by Amendment 14 to the United States Constitution.

203. Such violations of plaintiff's rights guaranteed by Fourteenth Amendment to the United States Constitution violates plaintiff's rights under the Thirteenth Amendment to the Constitution of the United States, as it increases on plaintiff the magnitude of involuntarily servitude as a patient to doctors, and it is continuing.

204. That the explicit or implicit agreements of the defendants to dismiss plaintiff's claim, to deprive plaintiff equal protection of the laws, to deprive plaintiff to access to courts through excessive force

and battery in depriving plaintiff of as hereinbefore described have were first made on July 10, 1992 and have continued and reoccurred to the present...

COUNT VIII

(Section 1983 and 1986 Failure to Prevent The Use Of Excessive Force)

1 - 204. Plaintiff incorporates paragraphs 1 through 204 of the Complaint, by reference as and for paragraphs 1 through 204 of Count VIII as though fully set forth herein.

205. The defendants are the State of Illinois, attorneys MARGARET O'LEARY, MICHAEL KRAUSe, eILEEN lYSAUGHT, Barry Bollinger, Dr. Henry Briele, Dr. Dennis Galinsky, Dr. Edward Brunngraber, Dr. Barry Wenig, Dr. Howard Kotler, and University of Illinois at Chicago Hospital and Clinics.

207. That during the period of time July 11, 1996 through September 15, 2000, one or more of the defendants failed to restrain one or more of the other defendants from committing one or more of the following acts of excessive force against the plaintiff described thereinbefore:

(c) denying plaintiff equal protection of the law...

(k) converting plaintiff's claim Bart A. Ross v. University of Illinois at Chicago Hospital and Clinics to Bart A. Ross v. Board of Trustees of the University of Illinois, they new was in violation of the law, paragraphs 120, 195.

[fragments]

IN THE COURT OF CLAIMS OF
THE STATE OF ILLINOIS

BART A. ROSS Petitioner	)	
vs.	)	No. 95 CC 3296
BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, Respondent.	)	

MOTION TO DISMISS PLAINTIFF'S ACTION AGAINST THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS

NOW COMES the Defendant, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS (hereinafter "BOARD OF TRUSTEES") by and through its attorneys, BOLLINGER, RUBERRY & GARVEY, and respectfully requests this Honorable Court to enter an order dismissing Plaintiffs Third Amended Complaint against BOARD OF TRUSTEES. In support thereof, Defendant states as follows:

1. On April 17, 1995, Plaintiff BART ROSS, filed his complaint at law in the Court of Claims alleging negligence for the treatment he received for squamous cell carcinoma of the mouth. The University of Illinois at Chicago Hospital and Clinics was incorrectly named as a defendant, when the BOARD would be the proper defendant. (A copy of the complaint is attached hereto as Exhibit "A.")

2. Plaintiff premised all allegations of liability against defendant, BOARD, on respondeat superior, alleging that the hospital was vicariously liable due to the alleged medical

22. On December 21, 1999, Plaintiff filed with the Court of Claims his Third Amended Complaint. Count I is a res ipsa count alleging fraudulent concealment on behalf of the Hospital. Count II of the complaint alleges negligence on behalf of the HOSPITAL as the principal responsible for the acts of its agent-doctors. (A copy of Plaintiff's Third Amended Complaint is attached hereto and marked as Exhibit "S.")

23. According to 705 ILCS 505/8, in order for a plaintiff to sue the University of Illinois on a tort theory of recovery, a plaintiff must sue the University of Illinois as "THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS" in the Court of Claims. Plaintiffs complaint improperly names the Hospital as a defendant in this action. Due to plaintiffs failure to name the proper defendant. Defendant's motion to dismiss should be granted...

26. Supreme Court Rule 273 states, "Unless the order of dismissal or a statute of the state otherwise specifies, an involuntary dismissal of an action, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join an indispensable party' operates as an adjudication upon the merits." The doctrine of res judicata, as set out by Rule 273, provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause

of action. An employer cannot be held vicariously liable for the alleged negligence of an employee where the employee has been adjudicated not liable at a final disposition on the merits. Toepper v. Cooker, 501 N.E.2d 934 (1986), citing to Towns v. Yellow Cab Co., 22 Ill.Dec. 519, 382 N.E.2d 1217; Ziemba v. Anania, 596 N.E.2d 157, 231 Ill.App.3d 99 (1st. Dist.-1991.)

Defendant's Motion to Dismiss Count II of Plaintiffs Third Amended Complaint should be granted because Plaintiff's Third Amended Complaint fails to state an independent basis of liability for the Defendant-BOARD. Plaintiff has not plead an independent basis of liability for the Board. The Board of Trustees cannot be held vicariously liable for the actions of the former defendant-doctors because the doctors received a finding in their favor when the Circuit Court entered an order dismissing the entire suit, which. operates as a final adjudication on the merits in a court of competent jurisdiction.

Furthermore, the Court of Claims does not have jurisdiction to reverse, vacate or in any way change the decision of the Circuit Court when dismissing plaintiffs suit against the defendant-doctors; based on the principle of res judicata the Court of Claims must recognize the Circuit Court decision as a final adjudication on the merits in which the all the agents of the Board were adjudicated not liable; thus, the principal, The BOARD, cannot be held liable for the acts of the agent-doctors. On these basis, Defendants' Motion to Dismiss Count II of Plaintiffs Third Amended Complaint must be granted. On the basis stated

above, both Counts I and II of Plaintiffs Third Amended Complaint must be dismissed.

WHEREFORE, the BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, respectfully request that this Honorable Court enter an order granting Defendant's Motion to Dismiss, and any further relief that this Honorable Court deems proper and just.

Respectfully submitted,
One of attorneys for the Defendant

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BART A. ROSS,	)
	)
Plaintiff,	)
	)
vs.	)
NO. 00C 6818	
Honorable Judge Coar	
Magistrate Judge Rosemond	
STATE OF ILLINOIS,	)
MARGARET O'LEARY, MICHAEL KRAUSE,	)
EILEEN LYSAUGHT, BARRY BOLLINGER	)
DR. HENRY BRIELE, DR. DENNIS	)
GALINSKY, DR. EDWARD BRUNNGRABER,	)
DR. BARRY WENIG, DR. HOWARD KOTLER,	)
and UNIVERSITY OF ILLINOIS AT CHICAGO	)
HOSPITAL AND CLINICS	)
	)
Defendants.	)

DEFENDANT STATE OF ILLINOIS' MOTION TO DISMISS

NOW COMES Defendant, STATE OF ILLINOIS, by and through its attorney, JAMES E. RYAN, Illinois Attorney General, and moves this Honorable Court to dismiss Plaintiffs Complaint against the State of Illinois pursuant to Fed.R.Civ.Pro 12(b)(1). In support thereof, Defendant states as follows:

Background

In Plaintiffs ninety-eight (98) page pro-se complaint, various allegations are made against the individual defendants regarding Mr. Ross' cancer treatment. The claims against the State of Illinois, contained in Counts V, VI, VII, VIII, all claim violations of 42 U.S.C. §1983, with Count VIII including § 1986. Count V seeks $200,000,000 in compensatory and punitive damages against the State for denying Mr. Ross access to the Courts by enacting Section 2-622 of the Illinois Code of Civil Procedure, which requires that a physicians affidavit must be filed attesting to the merit of a complaint alleging medical malpractice. Count VI claims a conspiracy between the State of Illinois and the other Defendants to dismiss Plaintiffs medical malpractice claim. Count VII claims a conspiracy between the State of Illinois and the other Defendants to deprive Plaintiff of his constitutional rights by dismissing Plaintiffs malpractice claim, and seeks $500,000,000 in compensatory and punitive damages. Count VIII, brought under 42 U.S.C. § 1983 and § 1986, claims that the State of Illinois and the other Defendants failed to prevent the use of excessive force and battery against Plaintiff, and seeks $200,000,000 in compensatory and punitive damages.

Argument

Plaintiffs Claims Against the State Of Illinois Are Barred By The Eleventh Amendment

Plaintiffs claims against the State of Illinois must be dismissed. Federal suits against a State and/or state officials in their official capacity are prohibited by the Eleventh Amendment. Pennhurst State School v. Halderman, 465 U.S. 89, 99-100,

104 5. Ct. 900, 79 L. Ed. 2d 67 (1984); Kentucky v. Graham, 473 U.S. 159, 166, 105 5. Ct. 3099, 87 L. Ed. 2d 114 (1985); Kroll v. Board of Trustees, 934 F.2d 904, 907-08 (7th Cir.1991); Meadows v. State of Indiana, 854 F.2d 1068, 1069 (7th Cir. 1988). Additionally, all suits against a state or its agencies are barred by the Eleventh Amendment unless the state consents to suit in federal court or Congress uses its powers under the Fourteenth Amendment to abrogate the State's Eleventh Amendment immunity. Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 (1985).

Unless Congress has chosen to override the Eleventh Amendment by legislating pursuant to its power under section 5 of the Fourteenth Amendment, see Fitzpatrick v. Bitzer, 427 U.S. 445 (1976), a state simply cannot be sued in federal court. This exception is not applicable in this case, nor has Illinois consented to suit. The Court in Pennhurst stated:

This Court's decisions thus establish that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another state. There may be a question, however, whether a particular suit in fact is a suit against the State. It is clear, of course, that in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment. This jurisdictional bar applies regardless of the nature of the relief sought.

465 U.S. at 100. It makes no difference whether the plaintiff seeks damages or injunctive relief. Id. at 102.

The State of Illinois is named as a defendant in this matter, thus, there is no question as to whether or not the suit is against the State. As this Complaint is directed against the State of Illinois, it follows that Plaintiffs claims are barred by the Eleventh Amendment and, pursuant to Rule 12(b)(1), must be dismissed as this Court lacks subject matter jurisdiction over such claims.

WHEREFORE, Defendant STATE OF ILLINOIS respectfully requests this Honorable Court dismiss Plaintiffs Complaint against the STATE OF ILLINOIS pursuant to Fed.R.Civ.Pro. 12(b)(1) with prejudice.

Respectfully submitted,

JAMES E. RYAN
Illinois Attorney General

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Chicago, Illinois 60601
(312) 814-3711

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BART A. ROSS,	)
	)
Plaintiff,	)
	)
vs.	)
NO. 00C 6818	
Honorable Judge Coar	
Magistrate Judge Rosemond	
STATE OF ILLINOIS,	)
MARGARET O'LEARY, MICHAEL KRAUSE,	)
EILEEN LYSAUGHT, BARRY BOLLINGER	)
DR. HENRY BRIELE, DR. DENNIS	)
GALINSKY, DR. EDWARD BRUNNGRABER,	)
DR. BARRY WENIG, DR. HOWARD KOTLER,	)
and UNIVERSITY OF ILLINOIS AT CHICAGO	)
HOSPITAL AND CLINICS	)
	)
Defendants.	)

DEFENDANT STATE OF ILLINOIS' REPLY IN SUPPORT OF ITS' MOTION TO DISMISS

NOW COMES Defendant, STATE OF ILLINOIS, by and through its attorney, JAMES E. RYAN, Illinois Attorney General, and in its Reply in support of its' Motion to Dismiss states as follows:

Background

In Plaintiffs ninety-eight (98) page pro-se complaint, various allegations are made against the

individual defendants regarding Mr. Ross' cancer treatment. The claims against the State of Illinois, contained in Counts V, VI, VII, VIII, all claim violations of 42 U.S.C. § 1983, with Count VIII including § 1986. Count V seeks $200,000,000 in compensatory and punitive damages against the State for denying Mr. Ross access to the Courts by enacting Section 2-622 of the Illinois Code of Civil Procedure, which requires that a physicians affidavit must be filed attesting to the merit of a complaint alleging medical malpractice. Count VI claims a conspiracy between the State of Illinois and the other Defendants to dismiss Plaintiffs medical malpractice claim. Count VII claims a conspiracy between the State of Illinois and the other Defendants to deprive Plaintiff of his constitutional rights by dismissing Plaintiffs malpractice claim, and seeks $500,000,000 in compensatory and punitive damages. Count VIII, brought under 42 U.S.C. § 1983 and § 1986, claims that the State of Illinois and the other Defendants failed to prevent the use of excessive force and battery against Plaintiff, and seeks $200,000,000 in compensatory and punitive damages.

Plaintiff previously voluntarily dismissed the State of Illinois from this matter, but the State was reinstated on August 14, 2001. At that time, the State renewed its' original Motion to Dismiss, which was filed on November 21, 2000, but was never decided. Plaintiff Ross has filed numerous responses to the Motion to Dismiss, none of which have been received by counsel for the State of Illinois. Counsel for the State has, however, read the latest two filings from the court clerk's file.

Argument

Plaintiff's Claims Against the State Of Illinois Are Barred By The Eleventh Amendment Plaintiffs claims against the State of Illinois must be dismissed. Federal suits against a State and/or state officials in their official capacity are prohibited by the Eleventh Amendment. Pennhurst State School v. Halderman, 465 U.S. 89, 99-100, 104 5. Ct. 900, 79 L. Ed. 2d 67 (1984); Kentucky v. Graham, 473 U.S. 159, 166, 105 S. Ct. 3099,87 L. Ed. 2d 114 (1985); Kroll v. Board of Trustees, 934 F.2d 904, 907-08 (7th Cir.1991); Meadows v. State of Indiana, 854 F.2d 1068, 1069 (7th Cir. 1988). Additionally, all suits against a state or its agencies are barred by the Eleventh Amendment unless the state consents to suit in federal court or Congress uses its powers under the Fourteenth Amendment to abrogate the State's Eleventh Amendment immunity. Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 (1985).

Unless Congress has chosen to override the Eleventh Amendment by legislating pursuant to its power under section 5 of the Fourteenth Amendment, see Fitzpatrick v. Bitzer, 427 U.S. 445 (1976), a state simply cannot be sued in federal court. This exception is not applicable in this case, nor has Illinois consented to suit. The Court in Pennhurst stated:

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defendant is proscribed by the Eleventh Amendment. This jurisdictional bar applies regardless of the nature of the relief sought.

465 U.S. at 100. It makes no difference whether the plaintiff seeks damages or injunctive relief. Id. at 102.

Plaintiff, in his responses to the Motion to Dismiss attempts to persuade the Court to use his own interpretation of the meaning of the Eleventh Amendment using cases from the late 1800s and early 1900s which are clearly not applicable. It is clearly established that the Eleventh Amendment bars suits against the State for monetary damages. As this Complaint is directed against the State of Illinois, it follows that Plaintiffs claims are barred by the Eleventh Amendment and, pursuant to Rule 12(b)(l), must be dismissed as this Court lacks subject matter jurisdiction over such claims.

WHEREFORE, Defendant STATE OF ILLINOIS respectfully requests this Honorable Court dismiss Plaintiffs Complaint against the STATE OF ILLINOIS pursuant to Fed.R.Civ.Pro. 12(b)(l) with prejudice.

Respectfully submitted,

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MEGHAN O. MAINE
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